

March 27, 2007



TRANSCRIPT
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MONTGOMERY COUNTY COUNCIL

PRESENT

Councilmember Praisner, President
Councilmember Elrich
Councilmember Leventhal
Councilmember Floreen

Councilmember Knapp, Vice President
Councilmember Trachtenberg
Councilmember Ervin
Councilmember Andrews
Councilmember Berliner



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1 Council President Praisner,

2 Good morning ladies and gentlemen, we apologize for being a little late but the Council
3 had an interesting morning meeting with the President and trustees of Montgomery
4 College and then we had a couple of closed sessions. Can we please rise for invocation
5 by Reverend Heather Janules, Cedar Lane Unitarian Universalist Church.

6
7 Reverend Heather Janules,

8 This morning we come together with hope in response to the call of our community's
9 greatest dreams and needs. As we begin the work of transforming our County, we
10 welcome wisdom and compassion. We cherish the values and practice of democracy
11 that brings us together, that gives power to our voices. With this hope for a more just
12 community, in recognition of the privilege of this service, let us begin with vision,
13 courage and love. We ask this in the name of all that is holy. Amen.

14
15 Council President Praisner,

16 Ladies and gentlemen, would you please remain standing for a moment of silent prayer
17 in the memory of Judge L. Leonard Rueben who passed away last week. Judge
18 Rueben served this County for many years as a judge, as a delegate to the General
19 Assembly and just as a friend to many in this room. The husband of former state
20 Senator Ida Rueben, Judge Rueben will be remembered and loved for many years.
21 Thank you. We have a presentation of a Proclamation in recognition of April as Autism
22 Awareness Month by Councilmember Knapp.

23
24 Councilmember Knapp,

25 Thank you Madame President and thank you to my colleagues. Liz and Karen,
26 welcome. As we often do here, in front of the Council, we try to bring attention to those
27 issues that we hope our society is paying attention to. And I think most of us if not all of
28 us have recognized that autism is something that is dramatically impacting our
29 community, dramatically impacting our families and impacting our nation. I believe it
30 was two or three weeks ago, it was on the cover of Newsweek to understand what
31 autism is and we are seeing impact in our school systems and the challenge I think that
32 we have is to really at this point continue to increase the measure of awareness. So
33 families know where to go for support, so congress knows where to provide research
34 dollars, where our pharmaceutical companies know where to deploy some of their
35 resources. And I'm very pleased to be able to sponsor this resolution with advocates for
36 the Autism Society who are here today. I was struck, a couple of months ago I was
37 watching TV and there was, I think a very compelling ad campaign that's out now that
38 talks about the incidence of autism and it talks about buckling your child in in your car in
39 hopes of avoiding an accident. It talks about the rate of incidence of an accident and
40 then it talks about the rate of incidence of autism relative to that accident and it's a ten-
41 fold difference. Autism rate is about 1 in 150 I believe, a car accident is about 1 in 2,300
42 or something along those lines. So I think it continues to be important for us to focus on
43 making sure that we as a community are aware of the impact of this in our community
44 and so I appreciate very much your leadership in making sure that we are aware and for



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1 your advocacy efforts. So we have a Proclamation recognizing this. So on behalf of the
2 County Council, whereas autism is severely incapacitating, lifelong developmental
3 disability resulting in significant impairment of an individual's ability to learn, develop
4 healthy interactive behaviors and understand verbal, nonverbal and reciprocal
5 communication. Whereas autism is the third most common developmental disability
6 affecting an average of one child in every 150 and. Whereas the causes of autism are
7 not yet known, but research to identify the causes and best treatment options is
8 continuing and. Whereas a cure for autism has not been found, the persons with autism
9 can be helped to reach their greatest potential and. Whereas accurate early diagnoses
10 and resulting appropriate education intervention are vital to the future growth and
11 development of the individual and. Whereas support groups such as the Montgomery
12 County Chapter of the Autism Society of America have dedicated years of service in
13 their ongoing efforts to advocate for the rights, appropriate education and availability of
14 services for all persons with autism and. Whereas these groups remain committed to
15 their cause of educating families, professionals, the general public, better understanding
16 this lifelong disability and ensure that individuals with autism living in Montgomery
17 County and all other Americans with autism are accurately diagnosed and appropriately
18 treated throughout their lives. Now therefore be resolved that the County Council of
19 Montgomery County Maryland hereby proclaims April 2007 Autism Awareness Month in
20 Montgomery County. Signed Marilyn Praisner on this 27th day of March, the year 2007.

21
22 Liz Roth,
23 Thank you very much.

24
25 Councilmember Knapp,
26 Thank you very much, appreciate it. (multiple voices) Share a few words?

27
28 Liz Roth,
29 Through the Proclamation, we've heard a bit about autism so I don't need to repeat it
30 but I will say 1 in 150, a number of years ago, five, six years ago, it was 1 in 10,000.
31 The rate has increased dramatically and it's because of the different triggers that trigger
32 autism. Autism is a spectrum disorder and it is very diverse. Among its diversity is the
33 way that it affects each one differently and also it knows no bounds. It affects
34 everybody, boys and girls, all races, all across the world. So therefore, it is a very
35 complex issue and we're looking at research, treatments and of course we would like to
36 have cures. Cures meaning to prevent and to be able to know how to go about the
37 treatment. In Montgomery County, we are very, very fortunate for our children, we have
38 a very good school system which teaches the least abled and the most-abled. The
39 Asperger kids are very, very high functioning as well as the Asperger's adults are very
40 high functioning. But even as our kids grow up to 21 and go out of the school system,
41 they still need services through DDA and help from the County Council and from our
42 business partners in Montgomery County. Education doesn't end when you get to 21,
43 you can still be educated. But because they've been educated so well, they need to
44 have employment in the community and through this employment we go through our



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1 service providers. And we have a few service providers in Montgomery County who are
2 exclusive to people with autism but the other agencies also provide services to people
3 with autism. We are very fortunate to have these providers. We have community
4 support services and CSAC and the ARC of Montgomery County. They are our primary
5 service providers. CSS is exclusive to autism as is CSAC. My son Andrew is a client,
6 day client, he still lives at home with his dad and myself and he loves to go out and
7 work. He is very fortunate to be employed by, let's see, who is it? (laughter) I mix it up
8 sometimes. (laughter) Fitzgerald Auto Mall up in Gaithersburg, and he's also by Pizza
9 Hut and the Gazette. Those are paying jobs. So he doesn't go to a job for the full day,
10 he goes to several different jobs on different days and so therefore he can keep his
11 attention on everything. Andrew is very skilled as are most of our kids in computer work.
12 And we need people who have offices who would be willing to take our kids on for a
13 couple of hours a day and to be able to do the work that they are skilled at doing. If you
14 know anybody, please contact us. I have cards or you can go to our webpage,
15 autismmontgomerycounty.com and we would appreciate anything that anyone can do to
16 give us help. This year, for our adult services, which we're getting more and more
17 people with, adults with autism, because these little kids have all grown up and they're
18 only little until they get to 21 and you're 21 to whatever age a lot longer. So we need
19 more help in the adult service provider issue. One of the things that we have, Nikasa
20 has put out and CSS has asked for, as well as other service providers. I'm going to turn
21 to the County Council for this guys. Okay, my testimony, your budget. As you know, has
22 asked for \$250,000 for CSS for their expansion and they're --.

23
24 Council President Praisner,
25 The mic won't pick you up if you turn around.

26
27 Liz Roth,
28 Oh darn. \$250,000 for the -- (laughter) I can project well too. I'm a preacher. \$250,000
29 for their expansion and for money for six mini-vans and we ask for your support. This is
30 so that our people can be out in the community and be able to do work in the
31 community. Thank you and we appreciate it and this is our ribbon for symbolizing the
32 hope that we need for solving the puzzle.

33
34 Councilmember Knapp,
35 Great.

36
37 Liz Roth,
38 Thank you.

39
40 Councilmember Knapp,
41 Thank you very, very much. Appreciate it.

42
43 Liz Roth,
44 Thank you (applause).



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1
2 Council President Praisner,
3 Our second Proclamation is in recognition of Montgomery County Tennis Association
4 being named 2006 Community Tennis Association of the Year and it was the
5 recognition by the United States Tennis Association and the Proclamation is being
6 presented by Councilmember Andrews.

7
8 Councilmember Andrews,
9 Good morning everyone. I'm pleased to be joined up here by Dave Pullen who is the
10 Executive Director of the Montgomery County Tennis Association, Frank Hatten who is
11 a leader in the Association and Gabriel Albornoz who is the new Rec Director of
12 Montgomery County who is representing County Executive Ike Leggett this morning and
13 Chuck Carter. Good morning Chuck.

14
15 Council President Praisner,
16 Mr. Tennis.

17
18 Councilmember Andrews,
19 That's right. Chuck is also a very strong leader in the Association. A -- once said in
20 tennis, love means nothing. We have people up here who, for those who aren't familiar,
21 literally the score in tennis, love means nothing. We have leaders up here who dedicate
22 a great deal of their time as volunteers for the association and, you know, requiring
23 endurance, guile, strategy, a great deal of resourcefulness, tremendous fitness,
24 remarkable concentration. No, I'm not referring to the Council's budget process.
25 (laughter) I'm talking about the sport of tennis and when played as well as can be
26 played by someone like Roger Federer, really exemplifying quite really great beauty as
27 well. But we have the leading tennis association in the United States according to the
28 United States Tennis Association and I want to present on behalf of the County Council
29 to these gentlemen this morning commendations for their terrific leadership in helping to
30 bring this sport to more people in our County. Montgomery County Tennis Association
31 has been formally recognized as the 2006 Community Tennis Association of the Year
32 by both the United States Tennis Association, the national governing body of the sport
33 and by Racket Sports Industry Magazine, the official voice of racket sports. And since
34 its creation in 1996, the Montgomery County Tennis Association has been led by strong
35 volunteer leadership consisting of over 75 diverse individuals representing a variety of
36 backgrounds committed to the growth of tennis in our community and the Montgomery
37 County Association is committed to a long-term partnership with Montgomery County
38 Recreation Department and the Montgomery County Parks Department by offering a
39 variety of programs that are made available to the community, including junior and adult
40 league programs for over 4,500 individuals, community tennis programs such as Tennis
41 Education and Mentoring that was initiated with Latino youth and other programs in
42 partnership with the Montgomery County Public Schools; and their fund-raising and
43 advocacy efforts have resulted in an increase in public expenditures that directly impact
44 the tennis community and launched the creation of a separate education foundation;



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1 Now therefore, do we, Isiah Leggett as County Executive and Marilyn Praisner as
2 County Council President, hereby congratulate the Montgomery County Tennis
3 Association. Upon receiving national recognition, we encourage all residents to
4 recognize the commitment to bring the very best quality tennis programs to the
5 residents of our community and signed this day by Isiah Leggett, County Executive and
6 Marilyn J. Praisner, Council President. Thank you for the good work that you all are
7 doing.

8
9 David Pullen,
10 Thank you so much.

11
12 Councilmember Andrews,
13 You're welcome. (multiple voices) Say a few words.

14
15 David Pullen,
16 Yes, I want to thank the Council and the County for all their support of tennis. We are
17 very excited this year because we feel fitness and recreation is an important part of the
18 lifestyle of our County residents and this year we are completely redoing the Wheaton
19 Tennis Facility, the Wheaton Indoor Tennis structure. It's been in poor shape for a
20 number of years and we are getting it renovated so that our County players can enjoy
21 tennis in a wonderful situation and we really appreciate all their support. Thank you.

22
23 Councilmember Andrews,
24 Thank you.

25
26 Council President Praisner,
27 Thank you.

28
29 Gabriel Albornoz,
30 Just real quickly, the County Executive extended his apologies for not being able to
31 make it today but did want to congratulate the Association for the wonderful work that
32 you're doing and recognize the best practice that is right in our own backyard. So thank
33 you very much for all of your efforts.

34
35 Councilmember Andrews,
36 (applause) For any of those who don't know County Executive Ike Leggett is a very avid
37 and very good tennis player.

38
39 Unidentified
40 We think he might be on court right now.

41
42 Councilmember Andrews,
43 (laughter) That would be a reasonable place to be.



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1 Councilmember Andrews,
2 Alright.

3
4 Unidentified
5 I'm not sure he'd want to make that.

6
7 Council President Praisner,
8 No.

9
10 Councilmember Andrews,
11 Are we set? Very good.

12
13 Council President Praisner,
14 (applause) General business. Linda Lauer. There you are.

15
16 Linda Lauer,
17 The only change we have is the addition of a T&E meeting on Tuesday, April 10th in the
18 afternoon when this session has ended. And then we did receive one petition this week
19 and that was from Montgomery County residents supporting full funding of the library's
20 budget. Thank you.

21
22 Council President Praisner,
23 Thank you. We have minutes. Madame clerk.

24
25 Council Clerk,
26 Minutes of March 12th and 13th for approval.

27
28 Council President Praisner,
29 Is there a motion on the minutes?

30
31 Councilmember Trachtenberg,
32 So moved.

33
34 Council President Praisner,
35 Councilmember Trachtenberg. Second, Councilmember Floreen. All in favor of
36 approving the minutes please indicate by raising your right hand. That is unanimous.
37 Thank you. Consent Calendar. Is there a motion for approval.

38
39 Councilmember Floreen,
40 Move approval.

41
42 Council President Praisner,



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1 Nancy. Councilmember Floreen. Is there a second? Councilmember Ervin.
2 Councilmember Floreen, you have an item you want to comment on? Just comment,
3 okay.

4
5 Councilmember Floreen,
6 Well, comment and ask that some information be brought back to the Council. This is
7 for item 3A

8
9 Council President Praisner,
10 Which item?

11
12 Councilmember Floreen,
13 Item 3a.

14
15 Council President Praisner,
16 Okay.

17
18 Councilmember Floreen,
19 The GASB requirement for disclosing County obligations for health benefits and the like.
20 I have a couple of questions that I'd ask that we could be briefed on when we take this
21 up again.

22
23 Councilmember Floreen,
24 I read the material that's been provided and I know that this has been an issue for the
25 County for some time and I compliment the hard work that's been done on this and very
26 excellent consultant services as well as hard work in the committee. I would like to know
27 though, have some information, you're proposing a five end phase--.

28
29 Council President Praisner,
30 Five-year.

31
32 Councilmember Floreen,
33 Five-year phase-in period and I would like to know if, I know that some other
34 jurisdictions have done this, I would like to know on the scale of things, if there are
35 jurisdictions looking at other greater year periods for phase-in and I wonder how many
36 comparably sized jurisdictions have actually locked in a five-year program as opposed
37 to discussing it. I saw in the memo that, everyone is taking this up and worrying about
38 this in a significant way and I would like, I think it would help us to understand our
39 approach in the larger picture. We are looking at this as a significant obligation. I
40 understand at least from the school system's perspective, it's \$16 million for them where
41 we have a \$20 million shortfall as they see it. And I think it would be helpful for us to
42 appreciate the implications of what we do here. I know that we need to do it. I know that
43 the rules do not require that we do it but that the bond agencies would like us, want us
44 to have a plan and I am wondering if there is something magic about the five year



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1 approach if we establish a plan that we commit to, agree that we're going to put the
2 funds in a trust and wouldn't that be sufficient for the agencies to accept our
3 seriousness in preparing for these future costs. So, and so that's the first issue. And the
4 other one, I wanted to understand the timing of this decision. Do we have to do that, this
5 right now? I understand it's scheduled for action pretty much right when we come back
6 and I am wondering if there's anything magical about doing it in April as opposed to
7 before we finalize this fiscal year. I understand numbers always change. It's been my
8 experience here and I would be interested in understanding if we need to make this
9 decision right now. I know there's been hard work and folks are poised for us to take this
10 approach and there has been a direction that has been implicit in all the work that's
11 been done to date, which I completely respect. But we'll be establishing this position
12 prior to going through the budget. Obviously this would set the stage for any decisions
13 we might make in the context of the budget and if we ended up looking at some different
14 spread of different year calculations, some of us might be more comfortable in some of
15 the decisions that we have to make. We have a, I mean I would be interested to see
16 what the numbers would be if we spread this out over six years, a modest change or, I
17 assume the actuarial analysis doesn't really change except for how you spread it out
18 over the years. The assumptions that are made, you know, we, I don't question that.
19 We'll leave that to the experts but I think this is an important policy decision that we
20 have to make and, you know, we already have a very significant fund balance that we
21 have established over time, six percent that is already there as a cushion. This is money
22 to be set aside without a current need but an expectation it will be drawn on over the
23 years so we're not spending, this is setting aside dollars that are not technically going to
24 be spent in the next year but to put us in the appropriate credibility position over time in
25 terms of how the bonding agencies look at our responsiveness to employee needs. I'm
26 not sure that I fully understand at this point, the five-year approach as opposed to other
27 approaches and I'd like to understand that in greater context.

28
29 Council President Praisner,

30 Thank you. I see some other lights. Are they on other issues or this issue?

31
32 Unidentified

33 This.

34
35 Council President Praisner,

36 This issue? Okay. Councilmember Trachtenberg, Chair of the MFP Committee is first.

37
38 Councilmember Trachtenberg,

39 Before I actually ask Mr. Farber to perhaps make a few remarks in response to some of
40 the issues that Councilmember Floreen raised, I just want to make a few points. Clearly
41 this is something that we discussed within the Committee. We came to a 3-0 vote on
42 recommendation of the phase-in for a five-year period. I think the first thing I really want
43 to say is that this is something that has been negotiated over a period of time for more
44 than just a year or two. We've been talking about this and clearly you know, we have to,



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1 if we're going to change anything we're going to have to have some rational around it.
2 And I don't think a focus around spending more in the operating budget is necessarily
3 something that is going to be a sufficient response nor do I think an argument around
4 the economy not being particularly healthy is going to be plausible or even really
5 anything that will confirm that being flexible and going to a six-year phase-in is in
6 anyone's best interest. You know, the purpose of the rating clearly that we have gotten
7 over the years is really to confirm to our investors that there's a certain level of certainty
8 in what they can expect from us in terms of repaying. They rely on us to follow through
9 on what we've committed to and I can't underscore that enough. And I think another
10 interesting aspect of extending a period say to six years or more is that the cost down
11 the road is actually going to be more by extending and I don't think, given the economic
12 times that we face in years to come and the knowledge that we have, as tentative as it
13 may be in some ways, we have a sense that next year our obligations are going to even
14 be more difficult to meet. So again, it wasn't a hard discussion for the committee to have
15 a few weeks back. This is, as I said just moments ago, something that we've been
16 discussing for years, it's been negotiated with the bond agency, the rating agency and I
17 would really be not particularly pleased with the idea of changing course at this time. I
18 really think it would be a particularly bad message for a new Council and even a County
19 Executive to be giving to these that are rating our performance and our participation.
20 And Steve if you want to --.

21
22 Council President Praisner,
23 Mr. Farber did you want to respond to the question or Jennifer Barrett is in the
24 audience.

25
26 Stephen Farber,
27 Yes. Well, as to Ms. Floreen's first point about what other jurisdictions are doing,
28 Jennifer Barrett, the Finance Director and I are working with Tom Lowman our Actuarial
29 Consultant will certainly provide that information. On the larger question, what we're
30 really talking about here of course is our obligations, the obligations that all the agencies
31 have to their retirees in terms of health insurance. And the whole point of the
32 governmental accounting standards were at statement number 45, is to have state and
33 local jurisdictions around the country disclose in their financial statements, starting this
34 July 1, what the true import, the true magnitude of those promises, those commitments
35 really is. So this is really quite similar to what happened a number of years ago with
36 pensions. With pensions as well, state and local jurisdictions in some cases were
37 providing money every year on a pay as you go basis. Whatever you needed that
38 particular year and that greatly understated what the obligations would be over time
39 when you had more retirees and you had to keep those promises and if you hadn't set
40 the money aside in a pension trust fund, you would have huge problems down the road
41 and now we're talking about setting up a trust fund for this purpose. A separate trust
42 fund to make sure that the promises we've made to our retirees for health insurance can
43 in fact be met. So that's really the context here. Now, Jennifer and I were talking this
44 morning about some of the background here and I think Ms. Praisner, you known



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1 because you've been on the bond rating trips every year but basically, the rating
2 agencies have discussed with Tim Firestine, the former Finance Director, with Ms.
3 Praisner, with the County Executive and other officials what the appropriate phase-in
4 period would be. This is an obligation that will amount to \$160 million per year above
5 and beyond the pay as you go annual amount when it's fully phased in. There are some
6 counties like Baltimore County that actually are phasing in their full amount, in their case
7 about 110 million in the first year. We are not doing that. The discussions that have
8 gone on now starting four years ago in the MFP Committee, have led to this notion that
9 a five-year phase-in would be appropriate for a Triple A jurisdiction like Montgomery
10 County. Jennifer and I were talking this morning and I think you noted Jennifer, that
11 were you to start from scratch today, you might even argue for a shorter phase-in
12 period, a three-year phase-in period because we are a Triple A jurisdiction. This is an
13 obligation we have to meet. We have no choice about that. And we might as well face
14 up to it and get it done. Are there tradeoffs? Of course. But the five year schedule
15 comes from that history.

16
17 Council President Praisner,
18 Councilmember Knapp, or Jennifer, did you want to comment first or maybe
19 Councilmember Knapp was on next.

20
21 Councilmember Knapp,
22 I don't have much to say particularly because it's an introduction but what I wanted to
23 get a sense of is, we know there are probably rocky waters ahead. And this is a policy
24 and I know that, as much as anything that the ratings agencies are looking for us to
25 have a policy that we adhere to. And so in anticipation of potential rocky waters, what if
26 at some point in the next couple years, there becomes a need for us to take a different
27 approach? How is that viewed? And I'm not looking for an answer today but just to the
28 extent that that's information that comes back to us just so we have some
29 understanding since we haven't heard anything positive as it relates to the economic
30 indicators coming from the state for the next two years, just to have that as feedback for
31 information. That if, at some point, you need to change, we have some understanding
32 as to how that would be viewed.

33
34 Council President Praisner,
35 Councilmember Elrich.

36
37 Councilmember Elrich,
38 I'm somewhat of an agnostic on the period of years that's involved in this. I think you
39 can make the argument for five and I'm sure you can make it for three and you might
40 just as well make an argument for seven. My concern is that I think we're, I think the
41 rocky road ahead is pretty apparent from the Executive's budget. And what I don't want
42 to do and what concerns me is constraining what I think are all the other functions of
43 government in order to create a fund. I mean I'm new here and we have a new
44 Executive and I think we've had a pledge to look really hard at how the County



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1 government is operating and to look for you know, how we can do things more efficient
2 and do it better but I don't want to unnecessarily or prematurely constrain some of the
3 decisions that we need to make to deliver services to people who expect services
4 delivered in the name of creating a fund that's not going to be tapped out next year or
5 the year after. You know, you're really building a fund for the future down the road. And
6 you do have, you know, significant County reserves that -- be missing 10 million or 16
7 million. It's not an insurmountable charge in trying to get that amount of money. So I
8 would like to have the space at least to get answers to the questions and talk about this
9 in the context of the budget and in the context of all of us thinking about not only what
10 we want to fund this year, but what the implications are for what we're committing to,
11 you know, for next year and the year after. I mean, we know it's been repeated over and
12 over again that 95% of this budget right now, or is it 99, is set in stone and what we're
13 doing is nibbling around the edges of what's new. I certainly think the Council would
14 benefit from thinking about the other 99% as well as the one percent we're going to add
15 and then think about how this fits into where we want to go. I wouldn't want to be
16 jeopardize the bond rating. Because that will cost us money. And so that would not, you
17 know, wouldn't be wise to take a path that would jeopardize that. But I, at the same
18 time, don't want to jeopardize our ability to provide what people in the community
19 expect. I think it's a balancing act between the two and I would just like time to try to
20 make sure we strike the right balance.

21
22 Council President Praisner,
23 This is only for introduction. Councilmember Ervin.

24
25 Councilmember Ervin,
26 Thank you. I really appreciate Marc's comments just now but this brings to mind a
27 memo Steve that you prepared last spring on the options that we had regarding GASB
28 and I remember looking at the six year phase-in option and if I'm wrong, correct me but I
29 believe that the six year phase-in option did not jeopardize our Triple A bond rating. It
30 would be great to resurrect that memo because it was a really great memo with a lot of
31 detail in it about several options that we had at the time.

32
33 Stephen Farber,
34 I will resurrect that memo. I don't recall ever seeing six years under discussion. I think
35 we've been talking for some time about five years as being the appropriate timeframe.
36 The issue really is keeping our promises to our retirees and I think five years has been
37 the timeframe talked about but I will try to resurrect that memo and see if there is any
38 further information in it.

39
40 Council President Praisner,
41 Councilmember Andrews.

42
43 Councilmember Andrews,



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1 Thank you. This has been discussed for a long time. Ultimately it would cost us money if
2 the bond agencies rated our, downgraded our rating and we also have to remember that
3 the rocky road ahead will at least have been partially self-induced if it comes to that
4 because of Council decisions over the years to establish benefit levels at certain
5 ranges. In fact, we will be considering a Bill this afternoon that would provide 20 year
6 retirement for career firefighters that would contribute to the increased cost over time of
7 retiree health obligations. So, these are decisions that are, have occurred over a
8 number of years that are still before the Council and GASB, which requires the pre-
9 funding of these retiree health obligations in order to show their true cost is just now
10 kicking in and people are beginning to see the full impact. I mean, this year it's 32
11 million, next year 63, 64 million, the year after that 95, 96 million, the year after that 120
12 and something, the year after that 150 in new obligation. And so, we are going to start
13 to see this impact pinch greater each year on the budget. And, it's something that we're
14 going to have to incorporate, in my view, into the budget because it is really not
15 optional. And it is being done as it was described in other places at a faster pace in
16 some cases than we are proposing here and I appreciate the MFP Committee's careful
17 attention to this important matter.

18
19 Council President Praisner,
20 One more comment Councilmember Elrich on this issue.

21
22 Councilmember Elrich,
23 I just want to ask Steve about a comment you made. You said this about meeting our
24 obligations to retirees and I don't doubt that that's the ultimate goal, but tell me
25 concretely how it matters to meeting that obligation, whether it means an obligation of
26 five years or six years. I mean, is somebody not going to get a benefit if this is a six year
27 schedule rather than a five year schedule?

28
29 Stephen Farber,
30 Well, I think the important thing is of course to set a schedule and to adhere to it. That's
31 I think what the rating agencies care most about.

32
33 Councilmember Elrich,
34 And I don't disagree about that.

35
36 Stephen Farber,
37 And the question then becomes what's the appropriate schedule? I think as Jennifer
38 pointed out, were she to start from scratch today, she would argue strongly for a three
39 year schedule because that's what a jurisdiction like this should do with respect to
40 obligations of this kind. I think Jennifer you mentioned some other obligations that we
41 have phased in over three years rather than a longer period. And again, this is a
42 function of conversations that have gone on now for several years with the rating
43 agencies and with our fiscal people. That is I think why the County Executive this year in
44 his budget has endorsed the five year funding schedule. And I think really it has to do



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1 with the history of those conversations and the view that five years for jurisdiction of this
2 kind with a Triple A bond rating ought to be able to step up to the plate and meet those
3 obligations on this schedule.

4
5 Councilmember Elrich,

6 But, that's kind of abstract outside of the discussion of the real numbers we're looking at
7 in the budget. I mean, the only way to do that if we were to do it in three years would be
8 to go back and hit revenues really hard this year and then really hard in the next two
9 years.

10
11 Jennifer Barrett,

12 That's right.

13
14 Council President Praisner,

15 I don't think she's suggesting to change that. She's just saying if it were ideal, the ideal
16 preference would be a faster pace.

17
18 Jennifer Barrett,

19 And the other situation that I mentioned with Steve Farber was at some point are, we
20 have policies here and it's a Triple A jurisdiction, is sticking to your policies, having
21 policies in place. We have a self-insurance fund that got funded below the policy level.
22 We entered into a three year plan to get it back on policy level. I assure you that as we
23 entered into the budget discussion, there was pressure to, like, well, but what if we
24 stretch it out to four years, you know that would give us another million dollars to spend
25 on something else.

26
27 Councilmember Elrich,

28 How much money were you talking about in this one? What's the value to the --.

29
30 Jennifer Barrett,

31 I'm sorry, in the self-insurance fund?

32
33 Councilmember Elrich,

34 Yes.

35
36 Jennifer Barrett,

37 It was much smaller and that's why the three years and we stuck to it. And that's exactly
38 part of the point is going to five years is because it is such magnitude. The rating
39 agencies do recognize that but the other point that I think Steve alluded to but I want to
40 make very clear, we haven't set aside a single dollar yet here in Montgomery County
41 and yet we have known about this for a few years. We had exposure drafts. GASB's
42 been out therefore awhile. We haven't set aside dollar one and it has appeared on our
43 fiscal plan as a five year phase-in. So, to change now how I explain that to the rating
44 agencies, why? Why are we changing? We're on a plan. We've shown it on a fiscal plan



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1 for setting aside. Why are we changing? And in terms of the timing having passage by
2 April 10th we have got a \$250 million general obligation bond issue that we're issuing in
3 May. We're going up to the rating agencies in just a few weeks and I'd like to be able to
4 tell them that Montgomery County set forth a plan and stuck to it and we wanted the
5 Council's passage of this resolution to evidence that. So, that was the timing to go up
6 and say, well, but they want to think about it and compete this, a plan we've already
7 been on but compete this in the budget process because I think I understand that's what
8 you're asking for in terms of stretching it out but we have a plan. Let the other things
9 compete but stick to this plan. That's what we're trying to advocate here.

10
11 Councilmember Elrich,

12 I guess maybe I just wish we had a five year plan for the whole package rather than just
13 one very significant expenditure.

14
15 Jennifer Barrett,

16 There is a five year fiscal plan. The Capital Improvements Program is on a five year
17 plan and the rating agencies are looking for long term budgeting planning and I assure
18 you that's something that we'd like to move towards also on the operating side.

19
20 Council President Praisner,

21 I would remind my colleagues that there's a lot in the operating budget that's on a one
22 year plan. And that we do every year on a one year plan. We never question or we
23 rarely question compensation increases or retirement benefits as my colleague
24 indicated. We add money for a variety of programs every year. Those are the issues
25 that we will continue to look at. I think it's important for us to have this conversation and
26 I know of no budget that we have ever had that hasn't had something where somebody
27 wanted us to spend more. That is always going to be on the table as an issue.

28 Councilmember Leventhal.

29
30 Councilmember Leventhal,

31 I wasn't planning to speak on this but let me just say I don't, on the face of it, object to a
32 five year plan for meeting our GASB goals. I look forward to us achieving our three year
33 plan for eliminating portable classrooms and I look forward to our achieving our five year
34 plan for fully funding the Montgomery Cares Program. So, there will be, well, and we are
35 definitely not achieving our ten year plan for eliminating homelessness so we do have a
36 lot of worthy goals in this County and we'll monitor our progress on meeting all of those
37 goals including this important goal.

38
39 Council President Praisner,

40 Some of which are self-imposed, others of which, others will be looking at with even
41 greater scrutiny.

42
43 Councilmember Leventhal,



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1 May I just say on that, I mean, it was an awesome experience serving as President of
2 this Council and I'm grateful to my colleagues who gave me that chance and one of the
3 most interesting experiences as part of that was to visit with the bond rating houses and
4 it really does give you an extraordinary look at everything as to how the County is
5 managed and the wide range of issues to come before the bond rating houses. The
6 County has an excellent long term relationship with the bond rating houses. I would
7 encourage all of my colleagues to serve your time as Council President when you get
8 the opportunity and you'll see how this is. It is not something that, anyone who has
9 participated in these meetings, should not use them as a way of, you know, frightening
10 or trying to intimidate those who have not been in these meetings. They are very
11 constructive, they're very detailed, they're very thorough and we all want to maintain our
12 bond rating and thus far there's every reason to believe that we have done so and will
13 continue to do so.

14
15 Council President Praisner,

16 Okay. Any other items on the Consent Calendar? I'd like to ask Martha Lamborn, I have
17 some questions on the Supplemental appropriation Item D. Martha, could you join me at
18 the table please? On Item D, which are the County Executive's changes to the Capital
19 Budget. I would note that these are awesome amounts of money Martha and I'm not
20 sure that we, how we're going to deal with them. But I am sure, oh what a puzzled look
21 you have, I am sure that the PDFs that came with them are well prepared and have
22 stood great scrutiny in the Office of Management and Budget. And that's because over
23 the years we've had Martha Lamborn who has served in an extraordinary role serving
24 County constituents as well as the Council and the Executive, many Executives and
25 many Councils in this role, major role that you have served in the Office of Management
26 and Budget. I have a little Proclamation or a little certificate on the occasion of your
27 retirement and I wish you would join me on the other side of the dais please. Questions
28 answered. (multiple voices) This afternoon members of County staff and hopefully some
29 others will join folks across the street to recognize Martha Lamborn on the occasion of
30 her retirement from County government. How we will proceed without you Martha, I
31 don't know. But you, I have this very small certificate because Glen didn't have the
32 words within him to write the Proclamation that he would normally do. But, we want to
33 recognize you for more than 22 years of outstanding service to Montgomery County
34 including 7 years at animal control, you survived that, and 15 years controlling the
35 animals in the Office of Management and Budget. The executive branch's readiness
36 criteria for new CIP projects, also known as the 16 points of light, the current revenue
37 adjustment chart and your tireless efforts to meaningfully quantify the operating budget
38 impact of CIP projects are but a few of the lasting monuments of your dedicated service
39 to Montgomery County and to all of us. So, I'd like darling Martha, as Glen calls you, we
40 all do. We don't have any other names. Darling Martha, I would like to present you with
41 this certificate and our best wishes. I really don't know what we're going to do.
42 Whenever we ask a question, Martha appears at the table and has the answer for us,
43 so I don't know how we're going survive through a capital budget process, thank
44 goodness this is an off year but I don't know what's going to happen next year when we



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1 do a full CIP. You have been a true friend and work so well with Council staff and with
2 Councilmembers and with countless folks across the street, I'm sure. And we are really
3 going to miss you. Thank you Martha.

4
5 Martha Lamborn,
6 Thank you.

7
8 Council President Praisner,
9 (cheers & applause) Your last chance to answer the Council.

10
11 Martha Lamborn,
12 I think speechless. I think speechless. Wow. That's so nice. I am so grateful. It has been
13 my pleasure but also great fun. We've had a good time and we've done some good
14 things. And I am grateful for the opportunity.

15
16 Council President Praisner,
17 Thank you.

18
19 Martha Lamborn,
20 Well, thank you. Thank you very much.

21
22 Council President Praisner,
23 Thank you (applause) Okay. The Consent Calendar is front of us. It's been moved and
24 seconded. All in favor of approval of the Consent Calendar, please indicate by raising
25 your right hand. That is unanimous. Thank you. Okay. We would move to the Board of
26 Health, we are, the Council is now sitting as the Board of Health and we have a
27 resolution for introduction of a Board of Health Regulation restricting trans fat use in
28 eating and drinking establishments sponsored by Councilmembers Trachtenberg,
29 Leventhal and Elrich. Councilmember Trachtenberg.

30
31 Councilmember Trachtenberg,
32 I want to start my remarks by thanking my colleagues, Councilmembers Leventhal,
33 Elrich and Knapp for sponsoring this Health Board Regulation. I also want to take the
34 opportunity to thank staff who helped prepare the resolution. I'm just going to make
35 some brief remarks. The Regulation as stated eliminates trans fat use in County eating
36 establishments. The question that I've had posed to me in the last week or so since we
37 released the information about this resolution was why? Clearly there's evidence that
38 links the consumption of trans fats to the high prevalence of heart disease and obesity
39 and I think an important fact to underscore in this is that while many consumers are
40 quite aware of content by labeling in food that they purchase, through menus, there
41 really is no comprehensive knowledge provided to consumers about content or even
42 cooking process. So, the evidence is there. The process is simple. I have stated quite
43 clearly that I consider this to be a sound public health practice and certainly one based
44 on common sense. Folks have continued to link their general wellbeing and health to



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1 their diet and I'm looking forward to a very healthy conversation with my colleagues
2 about why this regulation is really in the best interest of citizens here in Montgomery
3 County.

4
5 Council President Praisner,
6 Thank you. Councilmember Ervin.

7
8 Councilmember Ervin,
9 Thank you Madame President. I want to thank Councilmember Trachtenberg for her
10 leadership in this area and I need to have my name added as a cosponsor. I know your
11 staff did come by my office and I said yes, I would be a cosponsor and I'm very happy to
12 do that. And I want to also congratulate Councilmember Leventhal again on all the work
13 that he's done in the area of childhood obesity because these two issues are connected
14 and this is a great packet by the way with lots of really good information. And I do note
15 having served on the School Board the conversations that we had about childhood
16 obesity and especially in communities of color and where people have few means to be
17 able to really eat the way that they should eat. So, we know many, many people,
18 because of convenience, eat out at fast food restaurants where a lot of this really bad
19 practice makes people fat and very unhealthy. And Councilmember Trachtenberg, I
20 again congratulate you for your courage for stepping out and doing something of this
21 magnitude in the County and I want to just say please add my name as cosponsor.

22
23 Council President Praisner,
24 Councilmember Elrich.

25
26 Councilmember Elrich,
27 I just wanted to thank Councilmember Trachtenberg for introducing this and George's
28 support and now it looks like five of us supporting this. I think it's, this is an easy thing to
29 do. It doesn't change the taste of food. The solution to making food trans fat free is out
30 there. This is something it seems to me the government ought to do. It certainly is a
31 public health danger to have trans fats out there in the diet in general. And I'm very
32 comfortable going ahead in this area. It seems like it's a lot of gain and whatever pain
33 there is is manageable.

34
35 Council President Praisner,
36 Councilmember Trachtenberg again.

37
38 Councilmember Trachtenberg,
39 Just a brief remark. I apologize formally to Councilmember Ervin. I did not realize that
40 you had wanted your name and of course I gladly, well I'm enthused that I now have
41 your support as well. And again we'll have a healthy discussion about this and I promise
42 that the cookie jar in my office will no longer contain cookies that contain any trans fats.

43
44 Unidentified



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1 Cookie jar in the office, where's that? (laughter) Where's the cookie jar located?

2
3 Councilmember Trachtenberg,
4 It's right behind my chair dear.

5
6 Council President Praisner,
7 Okay. The hearing for this item will be, has not been set as yet. We're going to look at
8 that in the context of the budget and Councilmember Trachtenberg and I will confer with
9 Linda Lauer and staff as to when is a good time to be able to schedule this. So, thank
10 you very much everybody. We will now move into District Council Session. We have
11 action on the Montgomery County Planning Board Regulation Rules of Procedure for
12 Conduct of Hearings. The PHED Committee recommends approval as amended. As I
13 would note, there was one question in the Committee that we asked staff to follow up
14 with after the Committee discussion. The amendments are the technical amendments
15 back and forth with wordsmithing that was done between Mr. Faden and staff from the
16 Planning Board and Planning Board members. The one issue that did come up that we
17 asked for further discussion was the issue of the ex parte provisions as it relates to the
18 Planning Board. Now these are Planning Board ex parte rules and the rules note that ex
19 parte provisions do not apply to the Planning Board's consideration of rezoning and
20 special exception applications. The Hearing Examiner, Ms. Carrier had raised a
21 question about whether they should not, whether they shouldn't apply. She wanted them
22 to apply because she believed that especially in the rezoning, these issues are ex parte
23 for the Council and are done on the record of the Planning, of the Hearing Examiner.
24 And the special exception recommends, as you know, are comments that the Planning
25 Board may want to make. The Planning Board does not have to. The staff, Planning
26 Board staff is staff to the Board of Appeals but in the case of the Planning Board, they
27 may or may not comment on special exceptions, but these opinions, these rules would
28 say that those two items are not ex parte for the Planning Board. We asked staff to do
29 further research on that, Mr. Faden and Mr. Zyontz are here to respond to any
30 questions. The Rules in place for the Procedures for the Conduct of Hearings would
31 remain as introduced as far as the issue of ex parte and would not incorporate rezoning
32 and special exceptions because in both cases the Board is an advisor and the advice is
33 set on the record to the decision makers, either the County Council or the Board of
34 Appeals. My personal view is that while Ms. Carrier has raised, I think, an important
35 issue for us to consider, given this point in the process and our trying to have Rules of
36 Procedure in place, these can always be modified in the future if we believe that a
37 modification is necessary or if folks identify a concern but that it's important for us to act
38 on those rules of procedure as quickly as possible since they've been around since
39 January actually. My view would be that I would recommend that we go forward as
40 presented to this and the committee obviously did not discuss this follow-up issue
41 because we asked folks to go further with further consideration. But the action for us on
42 the regulations is as presented to the Council Committee not as suggested by Ms.
43 Carrier. Several lights. Councilmember Leventhal and then Councilmember Knapp.



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1 Councilmember Leventhal,

2 I just wanted to note that I'm really glad that this is coming up now at the beginning of a
3 new Council and I wish I had had the benefit of reviewing something like this four years
4 ago because in my contact with constituents, there are frequently times where
5 constituents will raise concerns with me that aren't before me. Mr. Berliner and I and
6 other Councilmembers have been talking with the neighbors of Montgomery Mall for
7 example, the matter of the Ashton Meeting Place is a constant hot topic over the email a
8 lot of us receive, the matter of the Indian Spring Subdivision and Tivoli Lake Boulevard.
9 These are all things that we have no ability, let me just repeat this for emphasis, no
10 ability to influence, by law and I've made mistakes and I confess, over the last few years
11 in, you know, in sort of trying to convey to the Planning Board on behalf of my
12 constituents certain sentiments and what this makes clear to me is we can't do that. And
13 it's very helpful to have this at the beginning of a new Council and I certainly will, and
14 have been discussing with my staff and want to discuss with Council staff sort of what is
15 a good protocol for us, where in some cases we are the final decision maker and I see
16 that's Françoise's point as to what is, you know, what should be ex parte and what
17 should not, where we are the decision maker. But certainly, where the Planning Board is
18 the decision maker we may not weigh in with the Planning Board, with commissioners.
19 Now, we may have interaction with staff to find out the status of things, but it's useful for
20 all of us I think to consider, in the conduct of our offices, what is the nature of our
21 interaction with the Planning Board and this document provides a very helpful overview
22 of that. So I appreciate the timeliness of this and I'm sorry it's taken me, now I'm in my
23 fifth year as a Councilmember before I understood this so fully.

24
25 Council President Praisner,
26 Council Vice-President Knapp.

27
28 Councilmember Knapp,

29 Thank you Madame President. I guess the only point I would add is that I agree with
30 what Mr. Leventhal has just said. The other piece I think that's important is this came
31 about as a result of a lot of discussion that occurred over the last 18 months, primarily
32 from the community up north which will remain nameless. But, more importantly though
33 I think there are things in County government and in the Planning Board that are
34 codified or appear to be codified and we don't have discussions as to how to make
35 those things work better. And by adopting these Rules of Procedure, was in response to
36 some shortcomings we saw in the current process. But I hope that we as a Council
37 remain open that as the current Planning Board, and as they bring on new members,
38 look at ways to do things better, more effectively, not necessarily more efficiently
39 because there are parts of County government that just kind of need to be what the time
40 is, but to, that they, if they make suggestions or recommendations, that we're willing to
41 have those conversations with them because I hope that this is the beginning of more of
42 a dialogue and to make government work more effectively for its residents as opposed
43 to just putting in a rule of procedures that looks nice today and in theory but in practice
44 may have some other issues with it and so we just need to have that open dialogue.



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1 And so, I think this is a good step but I would urge us to continue to keep talking with
2 the Planning Board to see what other ways we can make it work better for the rest of us.

3
4 Council President Praisner,
5 Councilmember Elrich.

6
7 Councilmember Elrich,
8 Just a couple of questions, that upon closer reading, I'd like an answer to. One is, in 4.5
9 Rules of Evidence there's a sentence that says, the Chairman may exclude from
10 evidence any irrelevant, immaterial, unduly repetitious material. How does one decide in
11 the process of somebody, for example, sitting there and beginning testimony, that the
12 testimony is immaterial or irrelevant? Particularly if it's only 3 minutes and at what point
13 can the Chair say this is off topic and you can't go on? Where's the intention to let a
14 person go on and simply instruct the Board that they can't consider what they just
15 heard?

16
17 Council President Praisner,
18 I'm not sure who can answer that other than a Chair, I know it when I'll see it.

19
20 Michael Faden,
21 I would invite, if they have anything to add on this point, Planning Board legal staff is
22 here and drafted these rules.

23
24 Council President Praisner,
25 You need to introduce yourself please.

26
27 Debra Daniel,
28 Debra Daniel. Legal Counsel for the Planning Board. I do think it is within the discretion
29 of the Chairman, and the Chairman, it is kind of one of those things that he'll know it
30 when he sees it, if he makes a mistake, if it's appealed, the courts will tell him that he
31 made a mistake.

32
33 Michael Faden,
34 I assume this is not really using the context of 3 minute testimony but longer hearings.

35
36 Debra Daniel,
37 I do think that these come in the context of sometimes there's a huge amount of
38 documents that are being introduced. I've seen in the past, sometimes somebody will
39 come in with a stack of this many documents and try to introduce it into the record and
40 at times commissioners do object to that because it's assumed then that they know
41 everything that's in those documents and they can't possibly digest everything that's in
42 there and use that as a basis for their determination so, that issue has come up in the
43 past. What happens usually is that there are times that they'll defer it so that they can



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1 actually go through all of the documents unless it's something that they find that is
2 irrelevant.

3
4 David Lieb,

5 Hi. David Lieb, also Legal Counsel for the Planning Board. As a matter of practice, I
6 think the Board very, very rarely excludes anything from evidence which is consistent
7 with what a lot of administrative agencies do when they're conducting hearings. They
8 tend to say we will give it the weight that it deserves. And so, and particularly, I think in
9 the context that you identified of someone giving 3 minutes worth of testimony, you
10 know, if they're going on about something maybe that's clearly irrelevant but it's going to
11 be over in a minute, I don't think they are going to feel that there's as much need to say
12 cut it out or, you know, or even to strike it really because this simply can give it the
13 weigh it deserves.

14
15 Councilmember Elrich,

16 Okay. My second question was on 4.6. It's about cross examination and does the right
17 to cross examination apply to the staff? Can citizens take the staff report and question
18 the assumptions on the work of the staff report and get answers to that or is it only the
19 citizen and applicant?

20
21 Debra Daniel,

22 No, they do and it's happened before, that either applicants or citizens do cross
23 examine staff.

24
25 Councilmember Elrich,

26 So, I've been in this process before and my recollection is never being able, if I didn't
27 have it in my testimony where I had taken my three minutes and decided I was going to
28 go after this point in the staff report, if that wasn't in the testimony I certainly didn't have
29 the opportunity after staff had reported, you know, as a citizen to say, you know, we
30 challenge or don't agree with these assumptions. In other words it was a choice of my
31 three minutes or, this appears to suggest that there is a time period beyond the three
32 minutes you can get for cross-examination and if you're going to have that it seems to
33 me that the citizens ought to have the opportunity to ask questions about the
34 information contained in the staff reports.

35
36 Debra Daniel,

37 It doesn't happen very often that people ask to be allowed to cross-examine staff, but it
38 has happened in the past and it has been allowed.

39
40 Councilmember Elrich,

41 My last comment is more directed toward us but I think at some point I'd like to get a
42 better understanding of what the ex parte rules are up here because I'm frankly
43 concerned when I see people going through the halls who I recognize as development
44 attorneys with projects and rolled up papers in their hands. And clearly the public has no



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1 idea who we're meeting with and who we're talking with and why they're here and, you
2 know, if we're expecting open and transparent processes on that end, I think it
3 behooves us to figure out how to make the processes on the Council, equally open and
4 transparent.

5
6 Council President Praisner,
7 Mr. Elrich, I'd be happy to have Council staff lay out or schedule a briefing for the
8 confidential aides if that would be helpful, that would lay out what's appropriate, what's
9 not, what's legal and what's not. I think that might be a good way to start, confidential
10 aides and any other Councilmember staff who may be interested in sitting in, we can do
11 that. I'm sure I'll work with Joy in my office to do that. Councilmember Berliner.

12
13 Councilmember Berliner,
14 My question to staff and to counsel for the Planning Board goes to the issue of the ex
15 parte question as it pertains to rezoning and special exception applications. And, in my
16 experience as an administrative lawyer, there's some jurisdictions that do not prohibit ex
17 parte contacts, but do require that any contacts be publicly noticed so that everyone is
18 aware of the communication, not that it's prohibited. My question to you is whether you
19 considered that for these circumstances or whether that's inappropriate in your
20 judgment.

21
22 Debra Daniel,
23 What we tried to do in these Rules of Procedure, we really haven't changed what the
24 Planning Board currently does --.

25
26 Council President Praisner,
27 Just codified it.

28
29 Debra Daniel,
30 We were just trying to codify it and what is in the ex parte provisions in here is exactly
31 what the Board's been doing all along. We kind of consider these more like quasi
32 legislative decisions and they're advisory and so we do not apply the strict ex parte
33 rules to it but we do apply the same notion to regulatory matters in the sense that if, in
34 fact some kind of ex parte communication takes place we do have the Board members
35 disclose them on the record.

36
37 Councilmember Berliner,
38 So, with respect to the answer to my question, that is that you did not consider whether
39 or not --.

40
41 Debra Daniel,
42 No.

43
44 Councilmember Berliner,



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1 --a modification --.

2
3 Debra Daniel,
4 No, we did not.

5
6 Councilmember Berliner,
7 --is appropriate.

8
9 Debra Daniel,
10 No we did not specifically discuss that.

11
12 Councilmember Berliner,
13 You just codified that.

14
15 Debra Daniel,
16 We just tried to codify the current practice.

17
18 Councilmember Berliner,
19 Now, my question is, in light of my question, do you see any merit with respect to this
20 sort of middle ground as I perceive it anyway with respect to this issue?

21
22 Faroll Hamer,
23 For the record, Faroll Hamer. I'm acting Planning Director. We actually did, I don't think
24 Debra was part of conversation, but I have had at least maybe one, you know, just sort
25 of off the cuff conversation with the chairman and other Planning Board members about
26 the advisability of the ex parte rules and I think the discussion sort of boiled down to the
27 issue about the problem of lobbying by applicants and the fact that it's perceived by,
28 certainly by citizens in the County that applicants have more time and more money to
29 do a more thorough job of lobbying than the citizens ever could and so in an effort to
30 level the playing field, that there was a consideration that the ex parte was a good idea.

31
32 Councilmember Berliner,
33 So, is this going to be something, in so far as you're codifying your existing rules, are
34 you going to be coming in with new proposals with respect to this?

35
36 Faroll Hamer,
37 No.

38
39 Councilmember Berliner,
40 Alright, so, I'm sorry, I'm a little confused. As I appreciate what we are talking about
41 now, the ex parte rules do not apply to rezoning and special exception applications, is
42 that correct?

43
44 Faroll Hamer,



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1 They don't apply to the Board. They do apply to the Council and the Hearing Examiner.

2
3 Councilmember Berliner,
4 Okay.

5
6 Faroll Hamer,
7 For the rezonings and special exceptions.

8
9 Councilmember Berliner,
10 And my question goes to the Board, as to whether or not with respect to matters before
11 the Board, these matters before the Board in which you are considering them and
12 recommending them to us, then have you considered whether or not that middle ground
13 of when an applicant comes before you and presses their case, whether you should
14 give notice because from my perspective, what the community is concerned about is
15 precisely what you articulated and what they need to know is, if you will, verification that
16 yes these people are pressing their case and again in certain jurisdictions it's not
17 prohibited and I'm not suggesting it should be prohibited but equal time is then allotted
18 to the other side if they wish to take advantage of it for purposes of pressing their case.

19
20 Faroll Hamer,
21 I see what you're asking. No, there wasn't really a discussion about whether the fact
22 that, there wasn't really any discussion about that particular issue.

23
24 Councilmember Berliner,
25 Okay, I would.

26
27 Council President Praisner,
28 Roger, I would like to recommend that this afternoon when we're meeting with the
29 Planning Board in their semi-annual conversation, that you might raise this for them to
30 consider as an issue. Because I think what you're suggesting is not a change to what is
31 ex parte and what is not, but you're suggesting a disclosure of the conversation and
32 perhaps then an opportunity for comment at the Planning Board level, not on anything
33 relative to us.

34
35 Councilmember Berliner,
36 That's great.

37
38 Council President Praisner,
39 Councilmember Elrich, last comment.

40
41 Councilmember Elrich,
42 I just, you know, Roger, I have a very difficult time with your suggestion because it's not
43 enough to disclose that a conversation occurred but you have no idea, and the public
44 has no idea, what was the nature of that conversation. I mean, what were the



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1 arguments made and what was the, what were the force of the arguments made that
2 aren't put out in public view? And the fact that the public would have then have the
3 opportunity for rebuttal doesn't mean the public would have any idea what to rebut.
4

5 Council President Praisner,

6 I really don't want to debate something that is not in front of us. I think what Mr. Berliner
7 is suggesting is more than what people get right now and folks can have this, if the
8 Planning Board considers it, folks can have this opportunity for conversation but it really
9 isn't an issue in front of us at this point. It's a disagreement among Councilmembers as
10 to whether the Planning Board should consider expanding their notice to people, is
11 basically what I hear. So, the resolution, the action today is on the Planning Board
12 regulations which can be amended at any time should folks have views about
13 modifications. It basically codifies the Rules of Procedure for the Conduct of Hearings
14 before the Planning Board and provides a document that was not available before for us
15 to consider and review as a Council and does come out of previous conversations of
16 proceedings and ways in which we can improve on the structure and the formalization
17 of those procedures. The PHED Committee recommends approval as amended which
18 were editorial and refinement in the wording, not in the substance. All in favor of that
19 action. It is unanimous. The Council will be meeting downstairs with our State
20 Intergovernmental Affairs staff and then breaking for lunch. We will be back at 1:30 for
21 Public Hearings. I would urge my colleagues to pick up their lunch and join me in the 6th
22 floor for the meeting with Intergovernmental Relations.
23

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1 Council President Praisner,
2 Good afternoon ladies and gentlemen. This is a Public Hearing on Zoning Text
3 Amendment 07-02 which would clarify the reference to the 1928 Zoning Ordinance and
4 generally amend the special provisions for conditions predating 1958. Persons wishing
5 to submit additional material for the Council's consideration should do so before the
6 close of business on March 30, 2007. The Planning, Housing, and Economic
7 Development Committee worksession is tentatively scheduled for April 9th at 2:00 p.m.
8 Please call 240-777-7910 to confirm. Before beginning your presentation, please state
9 your name and address clearly for the record and spell any unusual names. Our first
10 speaker is Greg Russ who is speaking not only on this item but agenda item number 8
11 for the Planning Board. Greg. Hi.

12
13 Greg Russ,
14 For the record, Greg Russ from the Montgomery County Planning Board. Zoning
15 Ordinance Text Amendment number 07-02 was reviewed by the Planning Board at its
16 meeting on March 22, 2007. The Board recommends approval of the Text Amendment
17 as introduced and included in the attached technical staff report. The proposed Zoning
18 Text Amendment would amend to the Zoning Ordinance to clarify the text of the 1928
19 Zoning Ordinance and generally amend the special provisions for conditions predating
20 1958. The Board of Appeals has based decisions on both the 1928 Ordinance and the
21 1930 Ordinance. The interpretation of the Department of Permitting Services is that the
22 1928 Ordinance controls development on lots recorded before 1928. The circuit court
23 resolved the issue in a manner that contradicts the interpretation of BPAs in the case of
24 the Duffy's. If you may remember that. ZTA 07-02 will declare the intent of the Council
25 for cases that arise in the future to property owners, the circuit court, the Board of
26 Appeals, the Department of Permitting Services, and the Planning Board. In the fact that
27 single family houses on lots recorded before 1928 must meet the requirements in the
28 1928 Zoning Ordinance, not the 1930 reenacted version. The Board believes that the
29 proposed ZTA would provide a useful clarification of the Zoning Ordinance. On ZTA
30 number 07-03 the Planning Board met on March 22, 2007, by a vote of 3-1 the Board
31 recommends that the Council not adopt the Text Amendment. The Planning Board's
32 decision was based on three considerations, first, the Text Amendment proposes
33 significant deviations from the Metro Station area master plans and sector plans. The
34 Metro Station area master plans and sector plans use height, density, green space and
35 other amenities to transition from the dense cores of the Metro Station areas to the
36 single family neighborhoods that surround them. The incentives proposed by the Text
37 Amendment may undermine the success of these transition areas. Second, the



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1 Planning Board did not find economic justification for incentives proposed by the Text
2 Amendment because many market rate condominiums are currently produced at prices
3 affordable to the workforce. Finally, this Text Amendment may be intentioned with other
4 policies that are under review such as efforts to increase TDR receiving areas. The
5 Planning Board recommends that all policies concerning the density and design of the
6 areas surrounding our Metro Stations be considered together. Otherwise changes in the
7 law intended to achieve laudable objectives concerning Workforce Housing may have
8 unintended consequences that make it more difficult to achieve other equally important
9 goals. Also, in his dissent Dr. Bryant noted that he believes that the intent of the Text
10 Amendment is reasonable with regard to the treatment of the edges of the Metro
11 Stations and that it might allow for a greater variety of housing types in those areas.
12 Thank you.

13
14 Council President Praisner,

15 Thank you very much. I see no questions. We'll call up now group B, Norman Knopf,
16 Joan Karasik from a transition work group, Jane Mayer, Michael Shulman and Emily
17 Eig. Norman, are you the only one who's here? Did everyone else, okay, come on up,
18 folks. Yeah, we're moving to the next. Mr. Knopf, you're first. That's right.

19
20 Norman Knopf,

21 Good afternoon. My name is Norm Knopf, 4701 Overbrook Road, Bethesda. I'm here to
22 urge adoption of the Zoning Text Amendment for small lots. It's to clarify the code. To
23 mean, when the code says 1928 Ordinance, guess what, it says 1928 Ordinance, not
24 1930 Ordinance. Until a recent case, this was very clear. Both DPS and the Board of
25 Appeals had been applying the 1928 Ordinance. There was one deviation. In 1998 the
26 Lumunsky case, the Board by 3-2 voted to apply the 1930 Ordinance. That was
27 inconsistent with their prior rulings and was inconsistent with what came after that. In
28 1999, in the Casey case which I handled, the Board distanced itself from the Lumunsky
29 decision. So, basically there was no problem. Everybody in the land bar and the
30 agencies knew you applied the 1928 Ordinance. So, what happened? Why is
31 clarification needed? We had a case in the circuit court in which the court ruled the 1930
32 Ordinance applied on an appeal from a Board of Appeals case. Why did the court rule
33 that way? Because there was no County Attorney that defended the Board. And why
34 was there no County Attorney? Because I'm sad to say this Council, the prior Council,
35 with one exception acquiesced in not having the Board's appeal defended. I would hope
36 this will never happen again. Leaving the Board of Appeals without a defending attorney
37 is in a sense rendering it a toothless tiger. It renders their decisions unenforceable and
38 meaningless. Even if a private party goes to the court, they are faced, -- they are faced
39 with the fact that the court notes where is the County Attorney. I guess the decision is
40 so bad, they don't want to come here and defend it. And you're adding insult to injury,
41 when a citizen wins a case before the Board of Appeals, such as appealing with DPS
42 has done, that's because they usually had a lawyer, time, and money to defend it and
43 they finally win and then what happens, they have to hire a lawyer and go off and
44 defend their win. I believe that is bad policy. The Planning Board has a cast of lawyers



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1 that go in there and defend vigorously every Planning Board decision. This is what
2 happens you have agencies. They have to be heard from. It should not be foisted on the
3 citizens. So, I urge you to please not have this situation repeat itself in the future, but to
4 establish a clear policy in this County that the County Attorney's office will defend the
5 Board of Appeals to make it a meaningful institution. Thank you.

6
7 Council President Praisner,
8 Thank you. I don't see Joan Karasik. Jane Mayer.

9
10 Jane Mayer,
11 Hi. My name is Jane Mayer and I live at 3706 Thorn Apple Street. And I wanted to tell
12 you why, from my own unfortunate first hand experience, this legislation matters so
13 much. My husband Bill Hamilton and I have the misfortune of living next door to a
14 house, the house that Norm is referring to, whose owners convinced a circuit court
15 judge this fall that contrary to 80 years of tradition and practice, the 1930 Zoning Codes,
16 not the 1928 ones should apply to them. Which allowed them to tear down a tiny one
17 and a half story cottage just 5 feet from their property line and replace it with a large,
18 new 35-foot tall house that is less than 10 feet from ours. It is so close that our kitchen
19 and dining room now look smack into a solid wall blocking all of the light and making it
20 impossible for us to even see the sky. Our daughter's bedroom windows now open right
21 into the other people's windows. So, that if she doesn't shut the curtains, the workmen
22 can stare in at her. We understand that the owners still have plans to build a side porch
23 or a stoop bringing their construction even closer still to within 2 feet of the shared
24 property line. Which will allow us to recreate the Grey Poupon mustard ad and hand
25 them the condiments right through our dining room windows. Our house, which is
26 historically designated by the Montgomery County Historic Preservation Commission
27 has had the exact same footprint since it was built in 1897. And it is itself less than 5
28 feet from the shared property line. The lots are small in our neighborhood. Which was
29 fine when the houses were small too, but as everyone knows, small houses are being
30 replaced by much larger ones which is putting incredible pressure on the Zoning Codes.
31 It makes absolutely no sense under these circumstances to change the laws to make it
32 easier for builders and developers to build even closer. The modern codes call for an 8
33 foot side setback at a minimum. The 1928 codes would already lower this to 7 feet for
34 houses on lots between 40 and 50 feet. And now, there's been an attempt to open a
35 loophole and reduce that to 5 feet by replacing the 1928 code with the 1930 one. I urge
36 you to close this destructive loophole right away before others exploit it. A 5 foot
37 setback, which can be reduced to just 2 feet with a porch and which also can be
38 reduced further by an overhanging roof is not enough. There were wise reasons of fire
39 and water safety, privacy, light, and esthetics behind these traditional codes. People
40 who walk into our house now exhale and say wow, what happened here? When they
41 see the 35-foot wall blocking all of our windows, not to mention the water pouring off the
42 roof from the neighbors into our basement. Well, I can tell you what happened here. The
43 County didn't uphold its own rules and it didn't protect my family or the value of our
44 property. And I would second what Norm was saying. The County Attorneys after we



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1 spent \$15,000 of our savings into paying a lawyer to defend us in front of the Board of
2 Appeals and won after six days of Hearings and very transparent and I think a model
3 process of open government, the County's attorneys didn't show up to defend this
4 victory in front of the court. We had no idea that they wouldn't be there. We would have
5 been there if we'd known they weren't going to be there. And I really don't see why a
6 citizen should have to pay even more to defend the Board of Appeals for this County.
7 They ought to be able to defend themselves. So, I urge you to support this Amendment
8 and send the lawyers next time to defend your own rules.

9
10 Council President Praisner,
11 Michael Shulman.

12
13 Michael Shulman,
14 I'm not going to add necessarily anything.

15
16 Council President Praisner,
17 I'm sorry.

18
19 Michael Shulman,
20 Michael Shulman, 3708 Thorn Apple Street. I too live in a landmark designated home
21 that was constructed at the same time Jane's was. I just want to echo what's been said
22 but the two key words to me are ambiguity and discretion. And the less ambiguity there
23 is in a law, the better. And that's however you look at this legislation, whether you like it
24 or dislike it, something needs to be passed to clear up any ambiguity because it gives
25 people at DPS and it gives the County Attorney's office who collectively are terrified of
26 headlines, terrified of people speaking into a microphone and confuse that with facts. It
27 gives them an opportunity to do the wrong thing because there is no clear black and
28 white. To the extent that you can provide black and white is great. To the extent that you
29 provide black and white, it also puts pressure on the County Attorney's office and other
30 regulatory authorities to do their job and to use their discretion more wisely. We – the
31 documents from the County Attorney's office so they have a checklist. I don't know if
32 you've ever seen it on whether they're going to defend something or not. And the box
33 that said political considerations was checked off. If I had known that, I would have
34 contributed more money to people who were running for office and forgive me for being
35 glib. But to echo what Jane said, this, by the way according to DPS, the house will be
36 the most out of code residential structure in Montgomery County okay, next to three
37 landmark homes. And just to wrap up, this is not over. I mean, there are more appeals
38 coming and you're going to be reading about it and etc. etc. But the bottom line is,
39 reduce discretion, reduce ambiguity and make clear to everyone what the proper lines
40 are in these situations can be avoided in the future. Thank you. Emily Eig.

41
42 Kristin Gerlock,
43 Emily asked me to take her time. I'm on the waiting list.



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1 Council President Praisner,
2 I don't have any waiting list.

3
4 Kristin Gerlock,
5 I spoke to -- I'm sorry.

6
7 Council President Praisner,
8 I don't have any waiting list and you can't take Emily's place. Those are our procedures.

9
10 Kristin Gerlock,
11 The woman I spoke to this morning said I was --.

12
13 Council President Praisner,
14 We'll check on it but at this point I'll go on to the next Hearing and they can check,
15 Amanda, if you can go and check to see if someone is on the waiting list because I don't
16 have one and we don't allow an individual to be substituted by another individual. So if
17 you can come back, if you can hold and we'll go on to the next Hearing and we'll see if
18 we have someone else. I'm sorry, but those are our rules. You want us to follow rules
19 and those are our rules.

20
21 Kristin Gerlock,
22 She told me --.

23
24 Council President Praisner,
25 Well, I'm having folks check on that to see if you're on the waiting list. Councilmember
26 Trachtenberg. No, don't leave because we may have a question.

27
28 Councilmember Trachtenberg,
29 Actually, I don't have a question. I just wanted to ask the Council President to add my
30 name to the ZTA as one of the sponsors.

31
32 Council President Praisner,
33 Okay. Alright. Folks have a waiting list for this individual? Why don't you go consult with
34 her and I'll go on to the next Hearing. Okay. Thank you. I see no other questions so
35 thank you very much. Good afternoon ladies and gentlemen. This is a Public Hearing on
36 Zoning Text Amendment 07-03 which would clarify that a developer in a Metro Station
37 policy area may voluntarily provide Workforce Housing and generally amend the
38 provisions for Workforce Housing. Persons wishing to submit additional material for the
39 Council's consideration should do so before the close of business on March 30th. The
40 Planning, Housing, and Economic Development worksession is tentatively scheduled
41 for April 9th at 2:00 p.m. Please call 240-777-7910 to confirm. Before beginning your
42 presentation, please state your name and address clearly for the record and spell any
43 unusual names. We have four speakers. Jody Kline, Robert Cope for a Citizen's



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1 Coordinating Committee on Friendship Heights, Richard Koch, is it, and Jim Humphrey
2 for Montgomery County Civic Federation. Jody Kline, you're first.

3
4 Jody Kline,

5 Good afternoon. For the record, my name is Jody Kline. I'm an attorney with the law firm
6 of Miller, Miller and Camby with offices at 200B Monroe Street, here in Rockville. And
7 your staff has handed out a little package I put together for you. And basically I'd like to
8 ask the Council to consider expanding the scope of the Text Amendments you're
9 considering today for the sole purpose of including the Forest Glen Metro Station site.
10 For reasons that I'm not quite sure the Forest Glen Metro Station site got treated a little
11 bit differently in the Workforce Housing Bill. And so that today, the opportunity to provide
12 Workforce Housing which the Text Amendment allows, is foreclosed on the Forest Glen
13 Station because it is not a Metro Station policy area and isn't eligible under the Text
14 Amendment. The second part of the package of material I have given you includes
15 some excerpts from the master plan indicating that the land owned by WMATA at the
16 Forest Glen Metro Station is recommended for PD18 and would be eligible for voluntary
17 provision of Workforce Housing if this Text Amendment is expanded. And the last
18 attachment in that bundle is a letter from WMATA saying they would like our co-
19 developer eventually to be able to have that as an option to be able to provide
20 Workforce Housing. So I'd like you to consider expanding by adding the language I have
21 suggested, or you might have your own language, I just gave you something I thought
22 paralleled the existing language in the statute a little better. When I made a similar
23 presentation to the Planning Board the other day, Mr. Russ pointed out that I'm not sure
24 we've ever had a Text Amendment that said you could do this in this one planning area
25 and I don't disagree that probably is true, although I haven't scrubbed the Zoning
26 Ordinance to check all that. But I also did some research and concluded that the only
27 Metro Station area that wasn't a Metro Station policy area was Forest Glen. For some
28 quirk of fate that I don't know why and I can't think of a particularly good reason that just
29 jumps to my mind why it should be precluded, it should be an option that could be
30 available there. I understand the Planning Board's concern about what this Text
31 Amendment does is gives the possibility of an additional height one level in areas
32 adjacent to single family detached residential and Mr. Russ was pointing out that might
33 be in conflict with master plan recommendations. But, don't forget, all we're asking to do
34 is have the opportunity to apply. The PD Zone, as you well know, has a planned, or I'm
35 sorry, a development plan amendment application which if you thought an additional
36 story of height would be contrary to the context around the Metro Station, you could
37 deny it and the Planning Board has site plan approval after that to make sure that the
38 additional height would be exercised in a manner that would be complimentary to the
39 context of the Metro Station. So I do believe it is worthy of your consideration to expand
40 it to all the Metro Station areas and I've given you the language of how you can do that.
41 Thank you.

42
43 Council President Praisner,
44 Thank you. Mr. Cope.



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1
2 Robert Cope,
3 Good afternoon. My name is Bob Cope. I am here today on behalf of the Citizens
4 Coordinating Committee on Friendship Heights which represents 11 citizens
5 associations surrounding Friendship Heights going up through Goldsborough and up to
6 Bradley. I am here to merely make a simple point. I have a handout. If you can read it.
7 My children say you probably can't read it, but if you can read it.

8
9 Council President Praisner,
10 Here it comes.

11
12 Robert Cope,
13 It says Bob Cope testimony.

14
15 Council President Praisner,
16 Everybody will get it. Okay. Keep going.

17
18 Robert Cope,
19 And at the bottom it says the provision of MPDU does not authorize a reduction in any
20 public facility and amenity for active or passive recreation space recommended in a
21 master plan or sector plan. This is language directly from the MPDU law that is now on
22 the books. We had worked with Steve Silverman when he was on the Board to put it in.
23 We were not testifying against MPDUs, all we were trying to clarify is that when you talk
24 about reducing green space you're talking about the lot, the buildable lot. So, in the
25 buildable lot, the square or whatever you may crunch things in or move things in closer
26 in order to have more units. But if you turn the page, and this is out of the sector plan
27 number 8 which is a triangle as a park. Number 9 is two baseball fields that are
28 supposed to go in and this is the GEICO site. And the point we wanted to make was
29 that you would not be adding under the legislation you would not be adding more lots
30 and whereas the sector plan guarantees a 5-foot park, we don't end up with a, I'm sorry
31 a 5-acre park. We don't end up with a 4-acre park or two baseball fields ends up being
32 one. That all we want is clarification that the language as to green space applies to the
33 green space within the confines of the buildable lot and not within or is expanded
34 beyond the lot boundaries to do away with amenities that are in a sector plan. As I said,
35 that clarification is currently in the MPDU legislation and we merely request that as a Bill
36 goes forward that you would also put that kind of language in the Workforce Housing
37 legislation. Thank you.

38
39 Council President Praisner,
40 Mr. Koch.

41
42 Richard Koch,
43 My name is Richard Koch. My address is 103 Leekswat Way in Gaithersburg, Maryland.
44 I submitted my testimony in a letter to the Council. It's under the Keystone REI



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1 letterhead. I'm simply going to read to you my letter. This ZTA is needed to correct an
2 oversight in ZTA 05-16 that amended the Zoning Code to add section 59A6.18 when
3 the Workforce Housing Ordinance was adopted by the Council. The oversight is that
4 section 59A6.18 does not specifically provide a developer with the ability to volunteer to
5 develop a Workforce Housing project. This oversight is apparent because section
6 59C.16 of the Zoning Code that was amended when the Council, also was amended
7 when the Council approved the Workforce Housing program, provided reduction in
8 green space requirements when developers volunteer to develop Workforce Housing in
9 the medium high density PD Zones where there's no requirement to develop Workforce
10 Housing. Furthermore, the oversight becomes more apparent because section 3.1E of
11 the Workforce Housing regulations authorizes the Housing Department to enter into
12 agreements with developers that volunteer to provide Workforce Housing. I attended the
13 Planning Board Hearing last Thursday morning when the Park and Planning staff and
14 the Planning Board deliberated this matter without coming to a consensus. This should
15 not be a matter that's left for debate by the Planning Board, the Hearing Examiner and
16 the Council each and every time a developer volunteers to develop Workforce Housing
17 projects in the medium high density zones utilizing section 59C7.16 of the Zoning Code.
18 In conclusion, ZTA 07-03 is needed to correct this oversight in section 59A6.18 and to
19 clarify that developers may volunteer to develop the Workforce Housing projects. I've
20 added two attachments to my letter and if I could call your attention to those two
21 attachments. The first is 59C7.16 of the Zoning Code which is the green area
22 requirements for the PD Zone. If you notice the area on the bottom right which I've
23 starred. You'll notice a one next to the PD18, PD22, PD25, PD28 and PD35 zones. And
24 if you go to the next page, you'll see that an asterisk is indicating that if a developer
25 develops Workforce Housing in those medium density PDs, that they are allowed a
26 reduction in green space. The third page is a copy of section 3.1 from the regulations
27 and 3.1E says the department may enter into and execute agreements to build
28 Workforce Housing units with developers who are not required to build Workforce
29 Housing units but who want to enter into agreements voluntarily. So, again, I believe
30 that we need to correct the existing language of section 59A6.8 to allow developers to
31 volunteer to build Workforce Housing projects. Thank you.

32
33 Council President Praisner,
34 Thank you very much. Mr. Humphrey.

35
36 Jim Humphrey,
37 Good afternoon. My name is Jim Humphrey. I live at 5104 Elm Street in Bethesda and I
38 am representing the Montgomery County Civic Federation as Chair of their Planning
39 and Land Use Committee. While MCCF supports the goal to increase housing
40 opportunities that are affordable to the workforce in areas where infrastructure can
41 accommodate its creation, we are recommending disapproval of Zoning Text
42 Amendment 07-03. We found the analysis of this issue provided by Park and Planning
43 staff very helpful as was there reminder of the Planning Board recommendations on last
44 years legislation that authorized creation of this Workforce Housing program. While



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1 discussing that legislation last July the Board asserted that increased density for
2 housing in Metro Station areas is a legitimate issue, but one which is best resolved
3 through the master planning process. As identified by Planning staff, there are
4 properties zoned for less than 40 dwelling units per acre on or near the edge of Metro
5 Station areas that would be affected by this proposed ZTA. Since these properties abut
6 existing neighborhoods a reduction in percentage of required green area reduces their
7 usefulness as landscape buffers between the denser development near the station and
8 the adjacent community. Retention of such buffers has become more important since an
9 increasing number of properties in metro areas are being approved with 22% more
10 density and/or height than recommended in the applicable master plan to accommodate
11 inclusion of moderately priced dwelling units. County code language affecting 14 zone
12 categories currently authorizes density or height above that permitted by the zone to
13 accommodate provision of MPDUs including any bonus density. Inclusion of Workforce
14 Housing could result in density 31% above that designated by the zone for properties in
15 some Metro Station area master plans. Because of our shared concern over the
16 negative impact this legislation could have on the validity and reliability of the master
17 planning process, the Civic Federation endorses the Planning Board recommendation
18 against approval of ZTA07-03. Again, we express our appreciation to the Planning staff
19 for a remarkable job in researching, analyzing and explaining the legislation. And by the
20 way, these landscape buffers are not just a pretty visual buffer between existing edge
21 neighborhoods and Metro Station areas, the denser development there. They serve an
22 environmental purpose as well. These are the very green areas which catch storm
23 water that has filtered pollutants out of the air and allow it to be filtered before it goes
24 into our ground water instead of being flushed into our streams and the Potomac River
25 and beyond to the bay. And also as Mr. Russ pointed out I wanted to remind you that
26 there is a concern that this ZTA might conflict with the purposes of the MPDU Program,
27 the TDR Program objectives in these areas and we want to take a look at all these
28 properties in a comprehensive manner. Should that be able to be accomplished in the
29 work program. Which you could discuss with the Planning Board very shortly. I
30 appreciate it. Thank you.

31
32 Council President Praisner,
33 Thank you very much. Councilmember Floreen.

34
35 Councilmember Floreen,
36 Thank you. I wanted to say both to Mr. Cope and Mr. Humphrey in particular I just want
37 to draw your attention, make you aware of something that's going on and I'm not sure
38 exactly where it is at this point. But there is an initiative spurred on pretty much by I
39 think the Bethesda, Chevy Chase Chamber to look at ways in which amenity space and
40 possibly green space is collected, you know, the obligations on-site are collected to
41 make a more useful either amenity or green space. There's some talk of that within the
42 community there. So, I wanted to draw your attention to that issue because that may be
43 playing into some of this as well. There's some concern that little bits of useless space
44 or small amenities are less valuable to the community at large than larger collected



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1 pieces and I'm not sure where that's all going to go but there is some talk about that and
2 I wanted to draw your attention to that. It might affect how you felt about this whole
3 thing. You might not think it's a grand idea or not, but you should be aware that some
4 folks have approached us on this and there's some work on language. Because the real
5 concern is how do you get, you know, meaningful green space? Meaningful amenities?
6 And of course we'll take it up in the natural course of business but that is something
7 percolating out there and you should be aware of it.

8
9 Council President Praisner,

10 Well, as I recall when we did the Woodmont Triangle, that was provided for within the
11 Woodmont Triangle. So it shouldn't be a surprise to anybody if people are having the
12 opportunity to collectively put together and make a more meaningful opportunity for a
13 benefit within the community, the Woodmont Triangle master plan allows for that.

14
15 Jim Humphrey,

16 That's right and just, with all do respect, I'm not sure I would refer to green area in these
17 properties as useless. (multiple voices) If you're a resident of one of these properties,
18 taking a 30% required green space area and reducing it to 20% is a reduction by one-
19 third. That's a significant reduction of places where you could take your kids for a walk
20 in the evening after work, or sit and enjoy a picnic perhaps or just take a stroll and have
21 some touch with natural habitats so I'm not sure I would refer to it as useless.

22
23 Councilmember Floreen,

24 Well, you of all people would appreciate how it's calculated and sometimes it's just edge
25 area or even in unexpected locations shall we say. So that is part of some work that's
26 ongoing.

27
28 Council President Praisner,

29 So we'll keep you posted on that. I see no other lights, so thank you all very much. Let
30 me call back. I'm sorry. I forgot your last name. Kris Gerlock, who is speaking, was on
31 the waiting list and therefore is not a replacement for another speaker but is on the
32 waiting list and can speak on her own behalf. And this is on agenda item 7, Zoning Text
33 Amendment 07-02.

34
35 Kristin Gerlock,

36 Thank you Ms. Praisner. My name is Kristin Gerlock. I live at 3700 Thorn Apple street in
37 Chevy Chase and have for 14 years. For the last two years I have been working on this
38 matter at 3704 Thorn Apple and in my spare time, I'm a real estate broker and I have
39 been for 28 years in Montgomery County. I urge you to support the Zoning Text
40 Amendment to clarify the zoning rules, rules that have been applied for the last 80
41 years. I am not an MB. On the contrary, I am pro-smart development. And I work for a
42 lot of builders. But this illegal house being completed on my block undermines our
43 property values and it undermines the process in the entire County, not just on my
44 street. A 5-foot setback may have been fine in the 1920s for a little cottage. But with



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1 houses being built to 35 feet, 5 feet is just unacceptable. Neighbors and developers will
2 continue to differ on the zoning laws and the process and we're never going to resolve
3 the issue of how to make everybody get along. But I think it would go a long way for you
4 to pass this Zoning Text Amendment. Thank you, thank you for allowing me to speak.

5
6 Council President Praisner,
7 Thank you Councilmember Berliner. Mic Roger.

8
9 Councilmember Berliner,
10 Thank you Council President Praisner. Ms. Gerlock, let me speak to the panel that
11 spoke in support of this legislation. It's the first time that we have really publicly had a
12 conversation with respect to the situation that developed on your street and I know that I
13 for one regret the experience that has been endured there and wish very much that it
14 would have been different. I can say that from myself and a number of my colleagues,
15 we hope to prospectively, obviously make sure that this doesn't happen again and this
16 Zoning Text Amendment is designed to do just that. And I will also tell you that, we'll be
17 having a conversation shortly after, very soon now with respect to Park and Planning
18 about the possibility of amending their work plan so that they can join me in looking at
19 the whole phenomena that older communities are experiencing with respect to the
20 existing rules of the game, the 5-foot setbacks and the inadequacy from my perspective
21 of those. Even the 7-foot that would have otherwise been available. So I want you to
22 know both in terms of the substance that we hope to address this in terms of the
23 broader public policy considerations, we hope to address this. And I will also share with
24 you, that since this whole situation developed, my colleagues have been very gracious
25 in devoting literally hours of time to discussing this situation, the procedures, the
26 process, the substance, so you have been on our minds and we have been grappling
27 with this situation, and my hope is that there will be some reforms that develop as a
28 function of this. But that's the kind of conversation that we've been having and will
29 continue to have. But I don't want the community to think that this has been happening
30 without any impact on our processes because it has had a significant impact. So I thank
31 you and again I regret the experience that you have had.

32
33 Council President Praisner,

34
35 Thank you. We'll now move to agenda item number 9. This is a Public Hearing on
36 Expedited Bill 5-07 Personnel Retirement Firefighters which would allow a Group G
37 member to elect normal retirement after 20 years of service, regardless of age, make a
38 Group G member ineligible for early retirement, change the eligibility requirement for
39 participation in the Group G Drop Program, increase the contribution rates to the
40 integrated plan for the first 24 years of credited service for Group G members, increase
41 the amount of pension to the first 20 years of credited service for Group G members,
42 allow for reduction in disability retirement lump sum payment by any amount of worker's
43 compensation that the County paid a Group G member during the period of time after
44 the effective date of the disability retirement and generally amend the law regarding



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1 retirement for Group G members. A Management and Fiscal Policy Committee
2 worksession is tentatively scheduled for April 9th at 9:00 a.m. Additional materials for
3 the Council's consideration should be submitted by the close of business, Monday, April
4 2nd. Before beginning your presentation, please state your name and address clearly
5 for the record and spell any unusual names. We have two speakers. Lots of folks to
6 staff. One of the speakers. But two speakers. Joe Adler and friends representing the
7 County Executive and Richard Kauffunger speaking on his own behalf. Mr. Adler.

8
9 Joe Adler,
10 Actually, I wouldn't call Mr. Buddle staff.

11
12 Council President Praisner,
13 Well, whatever, staff support to your speaking.

14
15 Joe Adler,
16 Thank you. Thank you Madame Chair. Good afternoon. My name is Joe Adler. As
17 mentioned, I'm Director of the Office of Human Resources for Montgomery County and
18 I'm here on behalf of the County Executive to speak in support of Council Bill 5-07. This
19 Bill amends the employee's retirement system for Group G members who are paid
20 firefighters, fire officers and paid rescue service personnel. These changes are the
21 result of the 2005 collective bargaining between the County and the International
22 Association of Firefighters Local 1664. The submission of this legislation fulfills the
23 County's obligation under that agreement. Just to summarize the legislation provides
24 the following. It does allow these members to elect normal retirement after 20 years of
25 service regardless of age. It makes Group G members ineligible for early retirement. It
26 changes the eligibility requirement for participation in the Group G Drop Program. It
27 increases the contribution rate for the integrated plan for the first 24 years of service for
28 Group G members and those are, they will go from 4.75% to 5.5% of employee
29 contribution and after they reach Social Security max it goes from 8.5 to 9.25, so there's
30 an increase of three-quarters of a percent that the firefighters will be paying into the
31 pension plan. It also increases the amount of pension for the first 20 years of credited
32 service. It provides for a benefit reduction of any lump sum disability retirement by any
33 worker's compensation amount that was paid after the disability retirement was
34 effective. And generally amends the law regarding retirement for Group G members.
35 There are, part of this legislation was drafted earlier and provided to the MFP
36 Committee on April 18th, 2005 and to the full Council on April 26, 2005. We made a
37 number of changes to the original draft after further review by executive staff. One is
38 that there is a provision for an offset of a retroactive lump sum disability pension by any
39 related worker's comp benefits received after the effective date of the disability
40 retirement as provided under the IEFF Agreement effective July 1, 2005. And using the
41 members' leave accrual date as the basis for reducing the members' contribution rate
42 upon the 25th year of service since the payroll service doesn't track credited service and
43 it also changes other areas of the retirement law that base certain ineligibilities of early
44 retirement date to the normal retirement date for Group G since they are no longer



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1 eligible for early retirement. Thank you for the opportunity to speak at this Public
2 Hearing and we look forward to working with the Council on its deliberations on this
3 legislation.

4
5 Council President Praisner,
6 Thank you. Mr. Kauffunger.

7
8 Richard Kauffunger,

9 For the record, my name is Richard Kauffunger. I reside at 2309 East Gate Drive, Silver
10 Spring. I am the son of a New York City firefighter. As a child of a dedicated firefighter,
11 my brother and I had a different upbringing. We were taught how to perform a rescue in
12 a burning building, how to open a building to let out the smoke and heat, how to give
13 mouth to mouth resuscitation to a child you're holding in your arms. So I was shocked
14 when a homeowner and father died in a house fire in the adjacent neighborhood.
15 Witnesses reported how the man was screaming for help as the firemen at the scene
16 fumbled with their hoses and were overwhelmed by the size of the fire. The initial
17 investigation revealed that these firemen were fully trained and were paid professionals.
18 Hearing this, I realized that I had to take responsibility for my family and four children.
19 We discussed at dinner what to do in case of a fire. We had family fire drills. I keep
20 ladders outside the house in spite of warnings of the police. Every fall, I fully drain hoses
21 and keep them covered so they are available even in freezing snow. I never turn off an
22 outside spigot. But back to the death of this man. After months of follow-up
23 investigation, the explanation of events was that the fire was bigger than anything they
24 had ever experienced and were overwhelmed. Only then did I learn how few structural
25 fires our firemen experience in a year. Last year, only 1% of calls were fires. Less than
26 50 fires per year per station on average. By contrast in the last fire station my father
27 served they had over 7,000 calls per year and over 50% were live fires. Nearly ten fires
28 per day. Despite all that daily experience, he often said that you had to serve at least 20
29 years before you were fully knowledgeable and professional. He served 32 years before
30 dying in the line of service at the age of 58. If he were here today, I know what he would
31 tell you. In a safe, low activity fire district like Montgomery County, it's crazy to retire our
32 men and women at 20 years, or even 25 years. We don't need strong young backs as
33 much as we need seasoned, highly experienced professionals who can read each fire
34 scene properly and always and reliably act in all kind of situations. For the health, safety
35 and welfare of the citizens of Montgomery County, do not reduce the time of service for
36 retirement to 20 years. Especially in this time of increasing urbanization and the new
37 challenges to our fire service. The safety of the public should not be subject to a
38 compensation negotiation. Thank you.

39
40 Council President Praisner,
41 Thank you very much. I had just one question. I wasn't clear. Mr. Adler, are you saying
42 that what is being proposed here is different from what we reviewed as part of the
43 collective bargaining action in 2005?
44



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1 Joe Adler,

2 In terms of substance no. In terms of technicalities, I'm sorry, it is still basically what we
3 had collectively agreed to with the firefighters but after a review of the legislation there
4 were things that, because of the allowance of early retirement after 20 years, so some
5 of the other provisions would not make sense.

6
7 Council President Praisner,

8 Okay. Can you, when we have the Committee discussion, differentiate what we
9 considered when we voted in favor of the collective bargaining agreement in 2005
10 versus what action the Council would be taking and then let us also understand what, if
11 any fiscal and other implications are associated with those actions?

12
13 Joe Adler,

14 Yes.

15
16 Council President Praisner,

17 I would appreciate that. Councilmember Andrews.

18
19 Councilmember Andrews,

20 Thank you. Mr. Adler, I can certainly understand why career firefighters would support
21 this legislation. But why do you think that this is in the public interest? Why is it in the
22 public interest to have retirement, normal retirement available at 20 years?

23
24 Joe Adler,

25 It was collectively bargained between the firefighters and the County and as you know
26 in collective bargaining, there are give and take. A 20 year retirement for public safety
27 personnel is not all that unusual. Prince George's County for example, has 20 year
28 retirement for both police and fire and corrections and sheriff. And it's 60% after 20
29 years. This is 50% after 20 years. It is, because of the nature of the work, because of
30 the fact that, I would disagree with the previous speaker. You do want folks that are
31 younger going to the service because it is hazardous and we see a lot of petitions for
32 retirement or disability retirement. Because as you get older, you get injured. The rate of
33 injury gets higher and this enables those firefighters that are not permanently disabled
34 or, you know, not injured to the point that they can't work an option for retirement and
35 they then are replaced by someone who is healthy and young.

36
37 Councilmember Andrews,

38 Well certainly, almost all firefighters at the beginning of their career are young. But,
39 Chief Carr is not young. Is he someone who is beyond his prime?

40
41 Joe Adler,

42 It's Chief Carr's decision whether he would like to retire or not.

43
44 Councilmember Andrews,



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1 We hope he doesn't. He's doing a great job.

2
3 Joe Adler,

4 Yes he is.

5
6 Councilmember Andrews,

7 Thank you.

8
9 Council President Praisner,

10 Okay. I see no other lights. Thank you all very much. Good afternoon ladies and
11 gentlemen. This is a Public Hearing on Expedited Bill 6-07, Structure of County
12 Government Non-merit Positions which would designate certain office and department
13 directors and certain other positions in the executive branches non-merit positions and
14 make technical and stylistic changes and generally amend the laws governing non-merit
15 positions in the executive branch. The Management and Fiscal Policy Committee
16 worksession is tentatively scheduled for April 9th, at 9:00 a.m. Additional materials for
17 the Council's consideration should be submitted by the close of business Monday, April
18 2nd. Before beginning your presentation, please state your name and address clearly
19 for the record and spell any unusual names. Our first panel is Timothy Firestine for the
20 County Executive, our CAO, Deborah Horan, Montgomery County Commission for
21 Women and Stephen Gurwitz, Montgomery County Advisory Committee on Consumer
22 Protection. Timothy, you are first.

23
24 Timothy Firestine,

25 Thank you. I am here on behalf of the County Executive to testify on Bill 6-07 and I do
26 want to thank the Council President for introducing this legislation which will convert a
27 number of high level executive positions from merit positions to non-merit positions. The
28 Executive is requesting this action for several reasons. First, it will provide more
29 flexibility to the Executive in filling senior level positions which have responsibility for
30 directly implementing the policies and managing the programs he is held accountable
31 for. It will add some uniformity and consistency among department directors, leaders of
32 principal offices and other senior high-level positions which have been designated as
33 non-merit through similar legislation. And finally, it will provide an opportunity to further
34 improve the cohesiveness and efficiency among the executive branch senior
35 management team. Currently, there are 39 non-merit positions within the executive
36 branch which fall within the concept recommended by this legislation. These positions
37 are selected by the Executive and as you know, they are confirmed by the County
38 Council. Passage of the legislation adds 15 more non-merit positions for a total of 54.
39 That number represents only six-tenths of a percent of all of the positions in the County
40 government. If we look at our neighboring jurisdictions, in Frederick County for example,
41 it's nine-tenths. In Howard County it's 1.9%. And in Prince George's County, it's 0.75.
42 So, even with this legislation, the Executive would have fewer appointees as a percent
43 of the workforce than in those other counties. For a somewhat larger comparison the
44 state of Maryland has more than 2,000 non-merit appointees in their management and



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1 executive service categories which make up about 4.6% of the state workforce. And
2 these non-merit appointees are very similar to the ones that are proposed in Bill 6-07.
3 And also at the federal level and it's not quite comparable, but just a for instance, in the
4 senior executive service, almost, most of those senior manager positions are career
5 merit appointees however Federal legislation does allow for 10% of those SES positions
6 to be filled by non-career, non-merit appointees. I also want to remind you that as you
7 know in the current non-merit positions other than directors of principal County
8 departments, they have specific job descriptions which are established by regulations
9 which are approved by you. Each of those regulations specifies the qualifications and
10 experience required of each position. We intend to follow the same process for the
11 positions covered by this legislation. Doing so assures that the candidates who are
12 selected and approved by the Council have the subject matter, expertise and relevant
13 experience required to successfully carry out the responsibilities of those positions. In
14 addition non-merit positions such as these which are not directors of principal
15 departments again are interviewed by the relevant County Council Committee prior to
16 their confirmation and Hearings before the full Council. When the legislation was
17 introduced there were a couple of concerns raised about some specific positions
18 becoming non-merit. Specifically I heard concerns about the Directors of the
19 Commission for Women and the Office of Consumer Protection. The Executive
20 encourages the Council to pass this legislation and include all of the positions contained
21 in the request. For comparative examples if you look at our neighboring counties, these
22 positions that were raised traditionally have been filled as non-merit appointees. For
23 example, in Fairfax County, the Executive Director of the Commission for Women and
24 Director of the Cable Communications and Consumer Protection are both non-merit
25 appointees. Although Frederick County does not have an Office of Consumer Affairs,
26 they do have a Women's Commission which is led by a non-merit appointee. And that's
27 similar to Howard County which does not have a Director for its Women's Commission
28 but it does have an Office of Consumer Affairs which is led by a non-merit appointee.
29 Before I conclude my remarks, I also want to emphasize that the passage of this
30 legislation will not impact the merit system employees who currently encumber any of
31 these positions. They are all dedicated public servants. Instead, this legislation assures
32 that the encumbered positions would not become non-merit until the current incumbent
33 vacates the position. I appreciate your support in this matter and I encourage you to
34 move the legislation forward.

35
36 Council President Praisner,
37 Thank you. Ms. Horan.

38
39 Deborah Horan,
40 Thank you. My name is Deborah Horan. I live at 6003 Kirby Road in Bethesda and I'm
41 honored here today to represent the Montgomery County Commission for Women. The
42 Commission was established by law 35 years ago in 1972 and is charged with
43 identifying inequities in laws, policies, practices, and procedures and recommending
44 and promoting remedies. While the Commission itself works to bring about changes in



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1 conditions creating inequities for women, the counseling and career center provides
2 direct services. I'm here today on behalf of all the commissioners to express our strong
3 opposition to the inclusion of the Executive Director of the Commission for Women in
4 Expedited Bill 6-07. At the outset, let me say that we fully understand that incumbents
5 are protected under this proposal. That is not the issue. Our strenuous objections are
6 not driven by a desire to rally behind the current Executive Director although I must say
7 her commitment and service to the commission and to the women of the County cannot
8 be overstated. Rather our concerns are fueled by very real policy concerns that are
9 underscored by our recent experiences at the state level. Considerable thought was
10 given to the issue when the legislation establishing the Montgomery County
11 Commission for Women was enacted. The County Council purposefully created the
12 position within the merit system and when legislation creating question A positions was
13 enacted, the issue was considered and again rejected. The merit system classification
14 of the Executive Director position ensures that the work of the Commission will not be
15 politically directed but will focus on what is best for the women of the County and
16 provides an independent voice for their concerns. The Commission for Women was
17 created to provide advice to the County Executive and to the County Council. Its advice
18 should not be politically constricted or directed. The Maryland Commission for Women
19 provides an example of the dangers of politicizing the organization staff and
20 demonstrates the Montgomery County Commission for Women is viewed as a national
21 model. And I will insert that both Fairfax and Frederick County have expressed this on
22 numerous occasions, that they wished that they had the same support and structure
23 that we do. Last year, the Maryland General Assembly revised the authorization of the
24 Maryland Commission and modeled their revisions on the legislation that established
25 the nonpolitical structure of the Montgomery County Commission for Women. Again,
26 one of the major strengths of our legislation is considered to be the merit system
27 classification and the Commission's Executive Director. Under the current County
28 Executive and County Council, we might all be happy with a political appointee who
29 would fill the position should it become vacant. However legislation is very long lasting
30 and we must protect the future of women's rights in Montgomery County. Under another
31 administration, we might deeply regret the politicization of this position. The members of
32 the Montgomery County Commission for Women are unequivocally and unanimously
33 opposed to the proposed change. We appreciate having the opportunity to appear
34 before you today and we urge you to remove the position of Executive Director of the
35 Commission for Women from the list of positions to be made question A appointments
36 now and in the future. Thank you.

37
38 Council President Praisner,
39 Thank you. Mr. Gurwitz.

40
41 Stephen Gurwitz,
42 Thank you. My name is Stephen Gurwitz. I live at 9128 Bells Mill Road in Potomac. I'm
43 the Chair of the Advisory Committee on Consumer Protection and on behalf of the nine
44 member Committee appointed by the County Executive, I thank you for the opportunity



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1 to testify concerning Bill 6-07. The Advisory Committee opposes the Bill as it relates to
2 the Office of Consumer Protection. And to echo what the previous speaker said, let me
3 ask you to consider what's best for the citizens of Montgomery County. What's best for
4 the consumers and the businesses who work and live in Montgomery County? What's
5 best for the senior citizen from Rockville who can't get a rain check from CVS? What's
6 best for the new American from Gaithersburg who is overcharged by a furniture store
7 because of a language barrier? What's best for the mother on public assistance who
8 can't get an unlicensed contractor to complete her repairs? What's best for the
9 independent car dealer who is losing business to the auto mall down the street because
10 of bait and switch tactics? The Advisory Committee strongly believes what's best for
11 these consumers and businesses is a Consumer Protection Office headed by a merit
12 system employee. In an office where there's no appearance of influence over its
13 decisions. And one where all citizens can seek relief without any concerns that their
14 politics or patronage play a role in the office. As you may know from its inception the
15 current Office of Consumer Protection was a principal office managed by a merit system
16 employee, Barbara Greg, who reported directly to the County Executive. By all
17 accounts, the office is one all County residents could be proud of. Under Greg's
18 leadership, it won national acclaim and many awards. This changed in 1996 when the
19 office became a division of the Department of Housing and Community Affairs and
20 overall management was transferred to a politically appointed administrator of that
21 department. The newly formulated Division of Consumer Affairs saw its budget cut
22 every year and lost 11 of 35 staff positions, including two investigators. It also had its
23 effectiveness curtailed. It's logical to conclude that the politically appointed Director of
24 the HCA was responsible for some of those consequences. In 2006 the County Council
25 restored the Division of Consumer Affairs to a principal office in the County government
26 and renamed it the Office of Consumer Protection. There's no doubt in the Advisory
27 Committee's view that this was a morale booster. Dedicated employees who worked so
28 diligently despite increasingly difficult conditions, were now more greatly appreciated as
29 a result of the decisions made by the County Council. We strongly believe that there
30 should be a merit system appointee not a political appointee to remove any
31 appearances of impropriety.

32
33 Council President Praisner,
34 Thank you. We have some Councilmember lights. Mr. Andrews.

35
36 Councilmember Andrews,
37 Thank you. Mr. Firestine, you mentioned that the appointments, question A positions
38 would take effect when the current incumbents left their position. Would that apply to the
39 current Director of the Office of Consumer Affairs who is an acting director?

40
41 Timothy Firestine,
42 The current acting director has no rights to that position as an acting director, so no it
43 would not apply. I mean, as an acting director, he has a position in the government.



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1 He's filling this position on an acting basis and would have to be appointed to the merit
2 system to get that status.

3
4 Councilmember Andrews,
5 Okay. I wanted to understand what your position was on that.

6
7 Council President Praisner,
8 Thank you. Mr. Leventhal.

9
10 Councilmember Leventhal,
11 I actually have a number of questions. First of all and maybe Mr. Faden or Mr., I'm
12 asking a question of Mr. Firestine but maybe Mr. Faden can help with this. Would Mr.
13 Leggett's proposal, leave in place, if we pass Mr. Leggett's proposal as he has
14 requested it, would it leave in place any agency head as a merit system employee or
15 does this pretty much complete the sweep and provide every department, every agency
16 is headed by a question A appointee?

17
18 Timothy Firestine,
19 No, there would still be Community Use of Public Facilities would still have a merit.

20
21 Councilmember Leventhal,
22 And that would be unique, that would be the only one?

23
24 Timothy Firestine,
25 I think at that level. I think that's the only one.

26
27 Councilmember Leventhal,
28 Okay. Mr. Faden, is that your understanding as well.

29
30 Mike Faden,
31 That's the only one I can think of.

32
33 Councilmember Leventhal,
34 Okay. So, Mr. Firestine, you are aware, I know Mr. Leggett has received a lot of
35 communications as well, from the Commission for Women and supporters of the
36 Commission for Women's point of view on this, and I don't bring to this, I mean, I'm
37 going to have to vote on this Bill one way or another. I don't bring to this a really strong
38 position of principle as to this position. But since so many communications have been
39 mounted regarding this particular position, what I've told a number of my friends on the
40 Commission for Women who have met with me on this is, you know, I'm not going to
41 take a position until I really hear the County Executive's specific position with respect to
42 that post, the Executive Director of the Commission for Women. I thought it was
43 important, it would have been very easy for me to respond to all of my constituents, I
44 agree with you, I agree with you, I agree with you, but we hadn't had this Public Hearing



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1 and I hadn't yet heard on behalf of Mr. Leggett, his specific view on that. So, this is your
2 opportunity. You're aware that this particular proposal has sparked a lot of interest.
3 Could you specifically address that? Why is it so specifically important that that position
4 be question A rather than merit?

5
6 Timothy Firestine,

7 Well, again, I think it fits into the same category as all of the non-merit appointees. I
8 think some of the arguments that have been presented in terms of why that position
9 should continue to be merit could be applied to any non-merit appointment in the
10 government. I think the protections you're trying to create there someone could argue
11 perhaps should apply to the Department of Environmental Protection. So we didn't see
12 any reason, the only reason the Community Use of Public Facilities position was
13 exempted is because of the multi-agency nature of that position and the fact that the
14 Board does include individuals from the school system and the other agencies and we
15 thought it would be difficult or it might be an issue with the other agencies to have that
16 position filled by someone who is solely sort of responsible to the County Executive
17 when you have other agencies represented. Beyond that, I don't see a reason to
18 exclude the Commission for Women.

19
20 Councilmember Leventhal,
21 Okay.

22
23 Timothy Firestine,

24 And neither does the Executive. We've had discussions about it after the fact. I think
25 some of the things we're trying to accomplish there that were concerned about certainly
26 can be accomplished in different ways. I mean, you can take that position and you could
27 move the incumbent to another job in the government, creating a vacancy there and,
28 you know, refill it through the merit system with a different person. I mean, there are
29 ways to sort of get around the issue of continuity or positions that perhaps you don't
30 want to work with in a certain policy direction. I think also the things we're talking about
31 protecting are things that you have to be careful about. Because, yes, you can move
32 people around but there are also certain protections in the merit system and if there is a
33 employee in there that isn't following the direction or gets, you know, in that position
34 under one administration but you want to change the direction for the next
35 administration you have no flexibility to do that.

36
37 Councilmember Leventhal,
38 Yeah.

39
40 Timothy Firestine,

41 And it is an important position in the government. It's a key position where you have
42 input. You don't have input now as a merit employee in that job. You certainly would as
43 an appointed position as that position comes before the Council.



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1 Councilmember Leventhal,
2 Yeah, I just have one observation, one more question Madame President. I apologize
3 for the length. I think you make a valid point and specifically with respect to the
4 environmental protection that is, if the argument on behalf of having these positions be
5 merit system positions, is that these positions should be able to operate without fear nor
6 favor, that they should advocate freely for what is right without regard to hurting the
7 Executive's feelings or getting on his bad side or her bad side in the future or whatever.
8 Certainly, you could say the same thing with respect to other department heads. Police,
9 fire, I mean many of them may need to take a controversial position that may be
10 displeasing or embarrassing to the elected head of County government. I think that's an
11 important point. I want to ask Mr. Gurwitz this. It seems to me you could make two
12 different arguments on this and the argument that you're making is that professionalism
13 and independence are assured by having this position not be politically appointed. Is
14 that a fair reading of what you're saying?

15
16 Stephen Gurwitz,
17 That's part of it yes.

18
19 Councilmember Leventhal,
20 But let me ask you this, is there not some aspect of accountability, I mean from the
21 standpoint of consumer protection, it would seem to me that the greater weight would
22 be in favor of having the elected officials have an effective, dedicated Director of
23 Consumer Protection who would reflect well on the Executive and that there might be a
24 concern which is what I think is the Executive's concern, that over some period of time a
25 merit system employee might become less than effective, less than accountable. Am I
26 right Mr. Firestine? And not that, I mean if they were malfeasance, if they were involved
27 in something really egregiously bad, they could be removed. But just that over time,
28 they might not be so good and that, not bad enough to get them fired but not really good
29 enough to reflect as well on the County Executive who is after all accountable for
30 everything they do. Is that a fair read? And so, some might say, particularly in the area
31 of consumer protection, that having a political appointee who has to consistently, you
32 know, who might be removed at any time might improve consumer protection. That, I'm
33 not taking either position, I'm just posing that question.

34
35 Stephen Gurwitz,
36 If I can respond to that. I understand what your perspective is, I understand what the --.

37
38 Councilmember Leventhal,
39 It's not my perspective. Honestly. I'm not taking, I don't have a perspective.

40
41 Stephen Gurwitz,
42 I understand the County Executive's perspective. I believe that the citizens and the
43 businesses of the County should not feel that there's any patronage or any political



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1 decisions that are made in that office. The Office of Consumer Protection. Because the
2 head of that office is accountable only to the County Executive.

3
4 Councilmember Leventhal,
5 Should any department heads be appointed as question A positions or should they all
6 be merit system appointees?

7
8 Stephen Gurwitz,
9 Well, I'm a long time federal government civil service employee and I've lasted or
10 worked through many department heads and I do work in an agency that is consumer
11 protection oriented and in fact it's the only agency of the federal government, the
12 Federal Trade Commission. That office is appointed. There were political heads during
13 the Reagan years that decimated that office. And I think that it was a problem for the
14 office. But, more so, I think that we are talking about what's best for the citizens and the
15 businesses of the County.

16
17 Councilmember Leventhal,
18 So following that logic, I'm not taking a position, I'm just trying to understand the thinking
19 and reason through it myself. Should we go in the other direction? Should the Director
20 of Libraries be in that position, the Police Chief, the Director of Health and Human
21 Services? Should the County Executive not be able to appoint anyone of his choosing
22 and should everyone just be merit system?

23
24 Stephen Gurwitz,
25 From my personal perspective, I think that there are important departments that need to
26 carry out specifically and need the trust and maybe the guidance directly of the County
27 Executive. I think that the Office of Consumer Protection has a long history of being in
28 business to look out for the interests of the consumers and the businesses of this
29 County and I don't think that whether, I don't think that a political appointee will advance
30 that any more than a merit system appointee. I do believe that a merit system
31 appointee, the appearance of a merit system appointee is a lot better than the
32 appearance of a political appointee.

33
34 Council President Praisner,
35 We have a couple more questions. Remind my colleagues that we also have another
36 panel on this issue. Councilmember Trachtenberg.

37
38 Councilmember Trachtenberg,
39 I'm going to attempt to keep my comments brief on this. I've already put my line down
40 on the sand in particular about the inclusion of the E.D. position for the Women's
41 Commission and the fact that I do not want it in the Bill. You know, maybe my
42 perspective is biased based on a lot of the feminist activity I've been involved in over the
43 years. But that's also afforded me a chance to meet a number of women from around
44 this country who do work on women's issues and many of them sitting on commissions



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1 presently or in the past or even looking to sit on them in the years ahead, and what I
2 would simply say is that it's very clear to me that the history of the commissions,
3 specifically even the one here in Montgomery County it's all about the fact that women
4 are at the table. That they are not there for political reasons but they are there because
5 they have a right to be at the table and what they work on are issues, education, it's not
6 supposed to be tainted by politics and I'm not suggesting that our current County
7 Executive or those that work specifically with him across the street are looking to make
8 this position as I've described it. But I also know from the conversations that I've had
9 with women from across this country that when this particular position has been
10 converted into a political one, the ramifications, the consequences of that have been
11 really quite negative and I could give a long list of states where this has happened. Ohio
12 and Kansas and Florida, Illinois are four. Maryland went through some difficulties a few
13 years back which Ms. Horan alluded to. But I also know that there have been very fine
14 experiences in states where this particular position has remained a merit position and
15 states like Pennsylvania, New Jersey, and New York are a few. And Montgomery
16 County's Commission, Deborah is quite correct, is seen as a model for a County
17 Commission. And I would just simply ask Ms. Horan to speak a little bit about what went
18 on in Annapolis around the Maryland Women's Commission and I'm specifically asking
19 you to talk about one thing because I think this is proof positive of where we can go with
20 this. It was my observation, and again I had the opportunity to see this firsthand, that the
21 commission really wasn't a working commission but very much a window dressing and
22 not only was the legislative effort impacted in a negative way, but the functions and the
23 tasks that the commissioners actually pursued were really nothing more than window
24 dressing and I'm really concerned about the fact that that might not happen now, but
25 years down the road it could. So, Deborah, if you could just briefly.

26
27 Council President Praisner,
28 Deborah, I'm going to ask you please to only to take a minute or less if you can. We
29 have another panel and we have the whole Planning Commission waiting for our
30 discussion which was supposed to have begun at 2:00.

31
32 Deborah Horan,
33 Absolutely. I was going to say I've included in my written testimony an outline that really
34 details the timeline about the Maryland Commission. So I draw your attention to that. I
35 will just say that after probably 13 years under a politically appointed director, a process
36 that drew women from across the state to focus on legislative priorities to take to
37 Annapolis, to elected members was disbanded. And it was disbanded because the then
38 governor had a problem with one particular topic, pay equity. That happened to be a
39 priority for the group of women and so, I draw your attention to the timeline. I certainly
40 understand time constraints here. But to underscore the experience that we and
41 commissions throughout the state and a number of elected officials in Annapolis had to
42 deal with in the recent years, gives us great pause and so again we'd appreciate your
43 removing the Commission for Women position from the legislation. Thank you.



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1 Council President Praisner,
2 Thank you. Councilmember Elrich.

3
4 Councilmember Elrich,
5 I hear what people are saying and I guess what I'm trying to picture is, the, I guess to
6 me all appointments are ultimately political whether it's an appointment at will of this
7 particular Executive or at the moment a vacancy becomes open. That is going to be still
8 a political appointment. I guess, my question is for, not Mr. Firestine, but the other
9 panelists. Suppose a cloud of the dark ages were to briefly descend over the County,
10 that coincided also with opening in, you know, the two positions that you're talking about
11 and the cloud of the dark ages lifts four years later, and we have in place people who
12 are now merit appointees not doing the kind of things that, you know, we would think
13 are appropriate for the County. How do you think that's going to get remedied if they're
14 merit employees? What happens then? We have the benefit and I agree of, you know,
15 good strong people doing things whose work we respect. What happens when it's, you
16 know, the people in those positions are not people that maybe we respect and don't like
17 the work they're doing?

18
19 Stephen Gurwitz,
20 I think that it gets remedied the same way it gets remedied in any merit system or civil
21 service situation. When the office does not function the way it's supposed to function,
22 whoever is the constituents of that office will make it known. And if the merit system
23 head of the Office of Consumer Protection is not doing his job, I think that businesses
24 and County residents will be beating down the door to you all and to their elected
25 officials and saying there's a problem her and let's see if there's a way to fix it. And it
26 may not be by replacing that person with a political appointee but it certainly, within the
27 merit system, if the man is not or the woman is not doing their meritorious job, they will
28 be removed.

29
30 Councilmember Elrich,
31 I guess my response is, I mean, there have been issues about how agencies do their
32 job. This does not come as a surprise to anybody and, you know, Executives have been
33 able to say it's the staff I inherited. This is what I have to deal with. If, you know, to me
34 the one advantage to appointed positions, is the Executive's can't say that anymore. If a
35 department is not doing what we expect the department to do, it is clearly the
36 Executive's responsibility because they have put people at the head of the departments
37 to carry out his mission. So, there's a level of accountability that I think traces back
38 more directly to the Executive for what the departments are doing than there is in, if,
39 were the positions to be strictly merit. I'm inclined, like my colleague Ms. Trachtenberg,
40 to look at some exceptions to this and I think there are good cases but I don't think that
41 the solution necessarily produces a guaranteed desirable outcome.

42
43 Council President Praisner,



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1 Councilmember, Berliner. Oh, you're light is off. Okay. I do have a couple of questions if
2 I may if staff can go back and give us, I'd really, not having been here when these were
3 structured, I was here for the consolidation in the Department of Housing and
4 Community Affairs but not in the creation of the commissions and it seems to me that as
5 we've had comments over the years about commissions and staffing for commissions,
6 we have the arts and humanities structure and then modified that. Not that I'm equating
7 the Commission for Women to that. But I would like some historical information about
8 assumptions about staff support for the commission structure in government. Mr.
9 Gurwitz, I guess I certainly had my differences of opinion with the previous Director of
10 the Department of Housing and Community Affairs. But if you're concerned about
11 staffing and budget issues, the responsibility lies with the County Executive and the
12 County Council which reviewed those positions and took whatever budgetary actions
13 and I would suspect that although there may have been discussions and I sat in on
14 them as a Councilmember. There were also budget challenges that led us to have to
15 make some decisions about structural changes and number of personnel that weren't
16 an issue of not supporting consumer affairs issues, but a function of department
17 challenges, and budgetary challenges that we continue to make as judgments
18 individually as Councilmembers and collectively as a Council every single year. So,
19 although, as I said, I may not have supported everything that the director said, the
20 political elected here make the final decision as to how many staff there are and what
21 focus there is on departments. Not the department. They may propose but we make
22 those decisions. The other comment or question that I really would like the Commission
23 for Women to get back to me on, is having reviewed and sat in the Committee on Health
24 and Human Services, where the Commission for Women budget has been, I'm a little
25 concerned by an assumption that there is so much independence by the Commission in
26 the budgetary operations of the work plans and work and your reference to that the
27 advice, the Commission for Women was created to provide advice, not necessarily to
28 run a department. And I think there is a distinction there that is very important. And if the
29 commission charter says advice to the Council and Executive you do so independently
30 and individually without constriction by any staff person or Executive Director. There's
31 never been and never will be a way in Montgomery County that a commission would not
32 be able to get to the elected officials with its opinions and its views. But you do not nor
33 do I think the Executive Director from a budgetary perspective, have independence to
34 decide what the Executive Director will do whether it's a merit or a political appointment.
35 Because we make decisions here about budget and there were significant concerns
36 about what the commission, what the office may have been doing that I know the
37 Committee and then the Council restructured. Not necessarily coming from the
38 commission by asking for long range plans, strategic plans, budgetary priorities and a
39 refocus of initiative, it was the Council that urged that fees be modified, that
40 programming be modified and it was the Council that did that direction. It was political
41 by your interpretation and therefore I'm a little concerned by the assumption that only a
42 merit position can protect those kinds of actions since actually the operations of the
43 office are budgetary actions so I don't know if you want to comment on that.
44



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1 Deborah Horan,
2 I'm not quite sure that I understand the question.

3
4 Council President Praisner,
5 Well, your comment here says a merit system person makes, means that the work will
6 not be politically directed. But the office's work is through a budgetary process which is
7 politically directed and it isn't an independent voice for women in general. It is advice to
8 the Council and the County Executive which the Commission for Women was created to
9 perform. So, therefore an assumption that it's independent, that only can be done by a
10 merit position is not consistent with the budgetary authority or with the advice to the
11 Council and County Executive and I wanted you to comment on that point, those points.

12
13 Deborah Horan,
14 I think that it's important to note that the Commission for Women is both a department
15 agency and an Advisory Board and I think that what I'm speaking to is the Advisory
16 Board.

17
18 Council President Praisner,
19 Nothing in this, what I'd like you to come back with in the interest of time is how your
20 advisory function is going to be compromised by having a merit or non-merit appointee
21 and that's the issue number one and from a budgetary perspective this Council had
22 made policy and budgetary decisions about commission for women activity, and the
23 office activity over the last 16 years that I'm aware of that that have directed and
24 structured from a political perspective you might argue where the office is supposed to
25 be spending its time. So I think it's the issue of a commission and its independence and
26 the issue of an office which has office responsibilities that I think we need to parse
27 through when we talk about whether it's a merit, non-merit position and whether that is
28 damaged or not damaged by being a political appointment and I would appreciate some
29 input on that issue from the commission. Okay? Thank you.

30
31 Deborah Horan,
32 Certainly.

33
34 Council President Praisner,
35 Alright, let's call the last panel on this. Oh, and I, here it is. Okay. Marvin Weinman,
36 Richard Alexander, Lawrence Jacobs and Susan Cohen. And Marvin you're first.

37
38 Marvin Weinman,
39 My name is Marvin Weinman, I maybe going against the tide in my testimony. But, I'm
40 here today for two reasons. The first is to support the Expedited Bill 6-07. The stated
41 object of the Executive's request is that by making certain merit system employees non-
42 merit it will bring about more accountability and responsibility to government. That's a
43 goal I support. He has indicated that all current encumbered employees serving
44 positions identified in the legislation will retain their position. Then this gets me down to



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1 my second point which is really the most important. And that's the performance of the
2 organization and how we can make it a better organization. I have been a volunteer at
3 the Office of Consumer Protection for over 15 years. The current Director Eric Friedman
4 is the only merit system employee functioning in an acting position. His leadership in
5 acting position over the last three years has resulted in numerous improvements that
6 have allowed expansion of the scope of actions the department can now pursue. This
7 has resulted in a broader range of consumer protection services available for complaint
8 resolution. Time will not allow for full discussion of all the enhancements however, most
9 of them are listed on the attached page. As a result of these enhancements,
10 Montgomery County has become recognized as a leader in citizen consumer protection.
11 The list goes beyond County benefits and includes Maryland and nationally recognized
12 benefits. A major area of the department's pride is criminal prosecution and the
13 conviction of unlicensed contractors resulting in jail time for violators and judgments
14 leading to significant refunds for the consumer. In one case it resulted in a \$43,000
15 judgment. Another important service area is automotive complaints. The reputation of
16 the Office of Consumer Protection investigators gets immediate attention and response
17 from car dealers and auto repair facilities. In some cases, when a reasonable settlement
18 can't be reached, consultation with a factory representative often provides positive
19 results leading to complaint resolution. What have you done for me lately? Let me tell
20 you about last week. Last week, Consumer Protection went to court with criminal activity
21 against three home improvement people. What happened is they got convictions on all
22 three and they got over \$8,000 back for the three individuals. Also I was there at a time
23 when the people from Consumer Protection went out and brought an elderly couple into
24 the court so they could be there for the prosecution of a case of somebody that took
25 advantage of them. You don't see that. The organization is operating at a level that it
26 has never operated on before. Let me just make one last point. It's always a result of
27 Eric Friedman being there. I am requesting that in fact that he be appointed to a full-time
28 position and run that department in a manner that it should be managed in. Thank you.

29
30 Council President Praisner,
31 Thank you. Mr. Alexander.

32
33 Richard Alexander,
34 Hello, my name is Rich Alexander --.

35
36 Council President Praisner,
37 I'm sorry sir, you need to push button in front of you. Thank you.

38
39 Richard Alexander,
40 Hello, my name's Rich Alexander. I'm a Rockville resident. 1103 Scott Avenue. I worked
41 for the District of Columbia's Office of Consumer Protection, also worked with Prince
42 George's County's Office of Consumer Protection and those were both political
43 appointees running those offices. And I was on the receiving end of a lot of pressure
44 and negative input that made my job and my ability to help the citizens that I was



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1 working for difficult. To me it's very disturbing to consider having to revisit what I left
2 when I stopped working in that kind of a situation. I had times when there was pressure
3 on me to take inappropriate action against employees I supervised. I had situations
4 where businesses that were doing bad things were, needed to be, people wanted them
5 ignored and had other situations where people that were doing good things and had
6 nothing to fear, should have nothing to fear, were being interfered with. It was very
7 trying. Just the thought of it is distressing to me. When the elections came up the office
8 fragmented and people supported either the incumbent or the challenger. The tensions
9 and the preoccupation with this, leading up to the election was detrimental to the office.
10 After the election when things changed hands, these divisions became just about
11 intolerable. I tried very hard to stay out of it and was brought into it. Eventually, they
12 threatened me for my job if I didn't take sides. The idea of doing this, I think, right now I
13 have no real problems with this particular administration but I do say and I heard other
14 mention to the time in the future, I'm very uncomfortable with this and its long term
15 possibilities.

16
17 Council President Praisner,
18 Thank you. Mr. Jacobs.

19
20 Lawrence Jacobs,
21 Thank you Madame President. I'm Larry Jacobs. I'm a lawyer in private practice at 110
22 North Washington Street. I've been a resident of Montgomery County since 1971. The
23 last time I testified before you was as Chair of the then Human Relations Commission,
24 now Human Rights Commission and I'm here today to briefly testify in partial opposition
25 on another position that you haven't hear anybody else talk about, the Executive
26 Director of the Office of Human Rights. The present County Executive and I share a
27 history in that he got his start as Chair of the Human Relations Commission. I haven't
28 managed to progress quite that far myself. But I was Chair for about 18 months. I don't
29 think this is a bad Bill. I understand his desire for greater accountability and flexibility in
30 hiring. I'm a small business owner myself and that kind of stuff is important to me, but
31 the County is not a small business. The Director of the Office of Human Rights is not a
32 legal secretary. People look up to the Office of Human Rights. It's something that I'm
33 especially proud of. It's interesting that it's almost exactly 23 years this month, one of
34 my greatest sources of pride, that this Council outlawed discrimination on basis of
35 sexual orientation. One of the first in this area to do it. People want to believe that when
36 they go in front of the Office of Human Rights, and we're not talking about the Human
37 Rights Commission that I was on, but the Office of Human Rights, that they're going to
38 get a fair hearing especially when we're talking about matters of, if not quite life and
39 death but certainly housing and employment are very, very important matters to people.
40 And that's where this position is really quite a bit different than some of the other ones
41 we've been talking about because the Executive Director in the office functions more
42 like a court system and the Executive Director has the adjudicatory authority in some of
43 these areas and there have been many highly publicized awards and these are matters
44 that people take seriously and I think it is crucially important that this position stay a



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1 merit position. If people are going to have respect for somebody that is basically acting
2 as a judge. This is a very diverse County and there are a lot of members of our diverse
3 community that rely on the commission for these very important matters. Thank you.
4

5 Council President Praisner,

6 Thank you very much. Ms. Cohen. No, the other button.
7

8 Susan Cohen,

9 My name is Susan Altman Cohen. I live at 9814 Eaglehead Drive in Bethesda,
10 Maryland. I want to say that I am a screener in the state's attorney's office and I see the
11 cases all the time that come across from Consumer Affairs. I consider this Bill a defeat
12 for consumers in Montgomery County. I spent my professional life as both a federal
13 employee and a retired employee from Consumer Affairs where I worked for 15 years.
14 Never in those 15 years was I ever asked to compromise my investigation because of
15 outside influence. In almost my 79 years, I have seen the effects of the deep and
16 disturbing influences bought about by political and commercial pressures in the local,
17 state and national government. The following are examples that show my displeasure at
18 the thought of not having a merit person in head of the office. I have served for 8 years
19 as a consumer member for two panels for the Federal Food and Drug Administration. I
20 have seen what politics has tried to do to the Federal, I'm going a little bit, Food and Drug
21 Administration. I worked for CIA for 10 years. I see what's happened there with the
22 influence. I have seen what's happened to the Federal Trade Commission. I have been
23 on two Boards of the state. The last one that I am now serving on, someone came into
24 the director of that office and said you have to leave this office in 30 minutes, you're out
25 because he was a political appointee. I have seen NIH, where my husband's been 40
26 years, become politicized. We must be very careful what we do. I have seen what
27 builders and developers do this is County. I've seen it in Loudon County. Eric Friedman
28 has, I have known him a long time. And I tell you, he's a man of integrity, he is devoted
29 to what he's going to do and I have seen what's become of this County, I've lived here a
30 long time and I am distressed. I think of what Mr. Bush said to the head of FEMA,
31 Browning you have done a heck of a job. We don't want that to happen here. There are
32 procedures within the personnel system if you don't like who is head of an office you
33 can certainly take action to remove this person. But this consumer office has been
34 absolutely a marvelous office, it's been tremendous dedication and never were we
35 pressured to have to respond to any kind of commercial interests. And the consumers, I
36 can tell you are fortunate to have this office. And I hope you don't change what you're
37 going to do. Thank you.
38

39 Council President Praisner,

40 Thank you very much. I see no other lights. So, this concludes this Hearing. Thank you.
41 This is a Public Hearing on a Special appropriation to the Montgomery County Schools
42 FY07 Capital Budget and amendments to the FY07-12 Capital Improvements Program
43 in the amount of \$1,152,000. If folks could please be quiet, we're still in the middle of a
44 Public Hearing, as you leave, I would appreciate it. Thank you. For HVAC Replacement



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1 and Planned Lifecycle Asset Replacement. Action is scheduled following the Hearing.
2 There are no speakers for the Hearing and excuse me folks, if you could please leave
3 quietly we're still in session. There are no speakers and so the Education Committee
4 recommendation is before us. Mr. Knapp who is Chair of the Education Committee.

5
6 Councilmember Knapp,

7 Thank you Madame President. The Committee reviewed this request, this Supplemental
8 yesterday, and recommended approval. It is a grant that we received from the state via
9 the federal government that has a number, through the state, primarily through, has a
10 number of specific requirements that need to be matched for the schools that are
11 entered into the program. Specifically it has a partnering program, partnering element
12 that it associates with the community and so as a result it is difficult to find a number of
13 different schools, so there's actually some money left on the table, but these are
14 projects that are in the priorities of, and in our Lifecycle Asset Replacement Program
15 that need to be done and so we recommend approval and it gets a little bit more money
16 into the system.

17
18 Council President Praisner,

19 I am glad there are 6 people present because it takes 6 votes to vote on this. The
20 Committee recommendation is before us for approval. All in favor, state aid is the
21 source of funding. All in favor. That is unanimous among those present. Thank you. We
22 will now move, I apologize for the lateness of the hour and the time keeping Planning
23 Board and Planning Board staff waiting, but we'll now move to the semi-annual report of
24 the Montgomery County Planning Board, an opportunity for us to meet with Planning
25 Board members and obviously Planning Board staff members who are in the audience
26 as well, to review not only the status of their work plan but also to discuss the initiatives
27 that they may be proposing for our consideration. Want to note as Marlene Michaelson's
28 packet does that, to the extent that the comments and issues that you may present to
29 us are budgetary items, those items will not be decided nor should anybody at the
30 conclusion of this meeting, think the Council is acting on anything that has a budgetary
31 implication. We will be taking the budget as everyone knows to the Planning, Housing
32 and Economic Development Committee where I suspect we will have more than one
33 Committee meeting to discuss the Planning Board's proposed budget and consideration
34 of some of the issues. So, to the extent there are budget implications they are not final
35 as far as our conversation today. Marlene, I'm going the turn it over to you for any
36 introductory comments and then to the Chair.

37
38 Marlene Michaelson,

39 I am going to just turn it right over to them to make their presentation.

40
41 Council President Praisner,
42 Okay. Where did Faroll go?

43
44 Faroll Hamer,



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1 Here.

2
3 Council President Praisner,

4 Oh, okay. I just, as we have your presentation, I did want to note Mr. Chairman that your
5 acting Director of Planning will be sitting here for this meeting and this will be the last
6 time, I guess, that you will be formally before the full Council given the fact that she will
7 be moving across the river, I don't know physically, but at least from the job day to serve
8 in the comparable position for the city of Alexandria. And I wanted to, before we start
9 this discussion, because I'm afraid we may lose people along the way, have an
10 opportunity for the full Council and especially this member of the PHED Committee to
11 thank you Faroll for the work that you have done stepping in in a very difficult time to
12 respond to and to help us work through the, both administrative and policy issues that
13 have arisen out of review of site plans and a variety of other things associated with that.
14 I thank you for your participation at the COG meetings to the extent you had time to
15 come. And I know that was a challenge. And just thank you for your service to
16 Montgomery County. We were lucky to have you available and I want to thank you
17 personally and on behalf of the Council for your service during this time period to help
18 us. Thank you.

19
20 Faroll Hamer,

21 Thank you very much. It's been my pleasure I learned a lot. Thanks.

22
23 Council President Praisner,

24 Well, we did too.

25
26 Royce Hanson,

27 (laughter) I just want to say --.

28
29 Council President Praisner,

30 --Hanson.

31
32 Royce Hanson,

33 Royce Hanson, Chair of the Planning Board. Madame President I just want to say that
34 the Board is very grateful for everything that Faroll did for us during these 14 months
35 that she has served in this acting capacity. She has really made a marvelous
36 contribution to the Commission and to restoration of the health of the Commission.
37 During the next 6 months, Gwen Wright has agreed to serve as our interim Director and
38 she and Faroll are now in the transition phase of things and Gwen may join us for some
39 of this discussion this afternoon also. There are a good number of issues that were
40 raised in Marlene's memo and in my cover letter and in the report. I'm going to suggest
41 something, that maybe, partly because you are running a little bit late but also because I
42 think it's really important. And that is that we spend a little bit of time this afternoon,
43 instead of dealing with the particulars. This is first time that the Board has had an
44 opportunity to meet with the full Council for a semi-annual review. And so the basic



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1 question that I hope we can spend some time thinking about this afternoon, is where
2 you would like the planning effort and the planning accomplishments of the Council and
3 Board to be 4 years from now. When your terms and my term have ended. If we can
4 focus on that, I think then a lot of the details will fall into place and it will be a lot easier
5 for us to deal with some of the scheduling issues and some of the other kinds of work
6 effort matters that we want to deal with.

7
8 Council President Praisner,

9 Royce, I hate to disagree, but I don't think we can look in 4 year increments at this point.
10 I really do think where we want you to be is to have done your work and to provide us
11 the advice and information and to help us to deal with the broad issues of where the
12 County should be going from a perspective. I'm concerned that there are individual
13 issues that Councilmembers want to raise and this is the only opportunity that they have
14 the chance to do this. So while we may want to wax philosophical about where the
15 County wants to be and where we want the Board to be, I also think we need to use this
16 time to be able to have the kind of fundamental discussion about the nitty-gritty work
17 that is a part of being and doing the public's business when it comes to parks and land
18 use. And we certainly can shape further conversations and have some opportunity
19 today for conversations about where we want to be in 4 years, but I'm also concerned
20 that there are fundamental issues associated with your report to us that I think individual
21 Councilmembers have planned to use this opportunity to --.

22
23 Royce Hanson,

24 We will be happy to respond to those. But I think well, I have given you my advice.

25
26 Council President Praisner,

27 Are there not any specific items that you want to raise with us as far as highlights or
28 points or issues that you think would be important? Our staff has laid out items from the
29 planning department, new initiatives, the master plan program, etc., that are going to
30 generate some questions from Councilmembers but --.

31
32 Royce Hanson,

33 We do want to talk about the master plan schedule --.

34
35 Council President Praisner,

36 Okay.

37
38 Royce Hanson,

39 --with you, because that really does shape the way in which we work. And there are a
40 couple of things that I think we would like to do. We want to move up the Twinbrook
41 plan. We think that can be delivered to us this summer and we should be able to have
42 that to you in September and we want to move up the White Flint plan. Because, there's
43 a lot of interest and activity in that area. We would like to get that to you in January of
44 this coming year so that you can act on it before you go into the budget next year. We



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1 have the growth policy which of course will be coming to you at the end of May, which
2 will probably give you a good bit of work between May and the August break.

3
4 Council President Praisner,
5 Council Vice President Knapp.

6
7 Councilmember Knapp,

8 Thank you Madame President. I appreciate the point that you raised Dr. Hanson as it
9 relates to kind of the broader vision and I would like to have that conversation but I'm
10 not sure that we're 100% there yet and one of the things I wanted to get a sense from
11 you and I've got a couple of questions. But, first of all is, well, talk a little more broadly
12 first. I guess I was struck, it's basketball season, so we're sitting here watching
13 basketball games and I'm looking at this report and I was thinking about where we need
14 to be from a planning perspective, where you are. The reports, you know, we've talked
15 about, where were we a year ago and the thing that has kind of struck me is kind of the
16 theme that we need to get back to and I know you've been trying to do this, but the
17 notion of kind of where are we as it relates to the fundamentals of getting the basics
18 done. And it strikes me, most everywhere I go and I was at a meeting again last night
19 where we're, I'm not sure we're at a point where we're getting the basic stuff, getting the
20 fundamentals addressed and it's the stuff like getting phone calls returned, getting
21 feedback. One of my staff had sent a message over to someone in the Planning Board
22 or Planning staff and got a phone call returned and had shared that with people in the
23 outside world and the kinds of feedback we got back were we had kind of moved to
24 exalted status because we actually got phone calls returned. And I don't mean that, and
25 I don't want to be derisive, because I want to be very careful. I know that staff is working
26 to do a lot of things. And we're working from a very shorthanded perspective. And so my
27 concern is given the fact that we have Faroll moving on, that we have Gwen moving in,
28 that we still don't have a Planning Director. I don't know how many positions we still
29 have unfilled.

30
31 Royce Hanson,
32 We have 19 unfilled right now.

33
34 Councilmember Knapp,
35 Okay.

36
37 Royce Hanson,
38 Or is it 18, 19.

39
40 Councilmember Knapp,

41 And so I guess the question I wanted to start out with from your perspective, is where
42 are, where are we as far as kind of putting the pieces in place to make sure that we're
43 doing the basic stuff that you know need to be done to get the job? I mean, you know



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1 better than all the rest of us, so as far as being an operating, functioning organization
2 that you want it to be, how close are we to being at that point?

3
4 Royce Hanson,
5 To get it to where I would like to see it, it's going to take 2 years.

6
7 Councilmember Knapp,
8 Okay. And what does that mean, in your mind?

9
10 Royce Hanson,
11 That means being ahead of the game rather than behind the curve on a number of
12 things. My colleagues may have other views of this but we still have indeed a backlog of
13 work. We can't not do it. New applications and new activities come in all the time. We
14 are heavily occupied with what I would describe as case work. Which are requests, very
15 often from Council and staff, to deal with particular matters and then to deal with them
16 again and then to deal with them again. This is really very frustrating and it does prevent
17 getting on to doing some of the basics that we need to do. The thing that amazed me
18 most I guess in these last few months is the amount of my time, the Director's time
19 that's taken with these matters which really do demand answers and responses as fast
20 as we can respond. I have tried to move from a system where we try to get a response
21 to someone within the C track system within a week. In many cases issues are quite
22 complicated and they require consultation with several staff members and they may
23 require consultation with people in other agencies in order to know what a, you know, a
24 reasonable answer is on something. And we try to do that as best we can. There are
25 some parts of the agency that really are overwhelmed. They may get 50 or 60 e-mails a
26 day on a particular case. So, and in addition to phone calls and other things. So it really
27 is --.

28
29 Councilmember Knapp,
30 So from 2 years from today or 2 years from actually being fully staffed, do you think
31 you're in a position to --?

32
33 Royce Hanson,
34 No, 2 years from, I am thinking of 2 years from August of last year.

35
36 Councilmember Knapp,
37 So we're 8 months.

38
39 Royce Hanson,
40 Look -- I'm not trying to give you a date when there will never be a problem. (laughter)
41 And part of this very frankly depends on what is done with the budget.

42
43 Councilmember Knapp,
44 Right.



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Royce Hanson,

Right now the executive budget holds us at or below our current level of effort. If that's what we end up with it won't be 2 years, it'll be 6. So, you know, we've got a lot of stuff that has to be done. Right now our distribution of work is over 50% of our work effort is on a regulatory side of things.

Councilmember Knapp,
Okay.

Royce Hanson,

The quality of what we do on regulation depends both on the improvement of the regulatory system and continuing management improvements that we're trying to make and it also depends on us getting ahead of it on the planning side so that we have got good direction and clear understanding of what it is we are regulating.

Councilmember Knapp,

What are your impediments to getting those additional 19 or 20 people hired?

Royce Hanson,

Finding them. We have made some considerable progress on it. We're interviewing people all the time and finding the qualified people to fill the positions, we've asked for a number of other things to be done. I have asked for a salary survey to be done so that we can look and see if there are problems in salary. I've asked for benefit changes to be made so that we have a portable benefit package as well our fixed, you know, that will take some time to get that done. We are making a major effort at the APA meeting which will be in Philadelphia in the next 3 weeks to do some major hiring efforts there. We are calling people and lining them up to do interviews.

Councilmember Knapp,

Okay. I guess, I have got some specific staffing questions that relates to the charts that you have in your, but I guess my biggest concern as I looked at the report that you sent over is that be it through master plans, delaying or accelerating some and putting in new potential work opportunities, that as you just said we're not in a position yet to kind of do the stuff that's in front of us. And so is there a way for us to work with you to accelerate that process and make that happen more quickly before we start to layer additional things on top of the stuff we're not already getting done well?

Royce Hanson,

What is not being done well?

Councilmember Knapp,



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1 The basic things that are in front of us. If we're not getting it done well how do we put
2 additional requirements on top of that to further diffuse the current effort?

3
4 Royce Hanson,
5 Well I don't, I don't think, you know, it's not just fungible in just moving a lot of staff on to
6 a particular matter. It's getting each component adequately and properly staffed to do
7 things. I'm not --.

8
9 Councilmember Knapp,
10 I'm just trying to find out ways that we can be helping you get to the point that you have
11 the resources, the people, the process, whatever it is to get the basic requirements of
12 what we expect the Planning Board and the staff to be doing before we move to the
13 next elements and layer new requirements on top of them. And I don't know what that
14 is, I am looking to you to try and figure out what it is that we need to make that work
15 better.

16
17 Royce Hanson,
18 I'm still needing a little help I guess, so my colleagues, you want to comment on this.

19
20 Allison Bryant,
21 Allison Bryant for the record. I'm not sure to what extent this is going to be helpful, but
22 among the things that occurred to me, it's true that dollars per se is not the only issue.

23
24 Councilmember Knapp,
25 Right.

26
27 Allison Bryant,
28 But there is a request for example that when it comes to the master plans that some of
29 the master plans be delayed. That's a part of providing help also because a lot of work
30 and thought has gone into really based upon our current complement, what realistically
31 do we believe we can get done while still dealing with the kinds of demands that get
32 made, that are planned and unintentional and as it stands now there are a lot of
33 unintentional things that are coming down the pike, that have come down pike that have
34 also interfered with our ability to talk in terms of carrying out the plan that we've had in
35 the past. I'm under the impression that those kinds of things would be helpful from that
36 standpoint. I'll let my other colleagues comment on some of the other things, but those
37 are the two main ones that I see right now.

38
39 Royce Hanson,
40 You passed today for instance our rules of procedure. We have a draft now on the
41 development manual.

42
43 Councilmember Knapp,
44 Right.



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Royce Hanson,

We will be sending that to Public Hearing very shortly and revising it and bringing it to you. I don't think we could do the development manual any faster than it's being done. It's been done by staff that are literally working weekends, Saturdays and Sundays to do it and they're still doing all of the other things that need to be done. We are making some progress on the regulatory side because we have, in addition to hiring new staff, which of course, have to be trained once they're on Board.

Councilmember Knapp,
Right.

Royce Hanson,

We've also brought in consultants to handle some of the regulatory issues. So we are catching up on regulatory issues. If you look at our agenda, at the number of resolutions that are before us each week there is usually a good batch that are there. One of the things that has happened, of course, is that everything takes longer than it did and that's not a staff function as such. The extent to which we have written staff reports and that we're posting them 10 days prior to holding the Hearing on them means a slow down in some things. It used to be fewer days of report and less extensive reports. We're trying to dot every I and cross every T on all of these matters. That requires very often legal review as well as staff review. We are bringing on, we have just brought on one additional attorney at this point to help with a number of matters that we have and we had one attorney leave a few weeks or a few months ago. So, we're getting that done. We are moving on master plans. We're trying to move them faster than we have moved them before. We have started a new procedure in which every master plan is now being brought before the Board several times prior to the staff drafts so that there is Board input into the process along the way. I think that's going to both facilitate faster Board action on plans getting them to you faster than they have been in the past. I don't think we, I don't see this as a matter of stopping and getting everything in order before we proceed. I think that would be a very serious mistake. We have to start doing the new stuff while we're doing the other stuff. We are literally running and pulling up our britches at the same time. It's inelegant. (laughter) It's the way you got to do it.

Councilmember Knapp,

Just two quick questions. The first is, how is staff morale? You know, how --.

Royce Hanson,

It's terrific. (laughter) It's especially good and appreciative of complaints about things not getting done fast enough.

Councilmember Knapp,

Well it's not a complaint, that's the point I want to be clear about. It's not a complaint. The point we have in front of us is, how do we get to a point that things are working



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1 well? You sat in front of us and said; things are not working the way you want them to
2 be. I recognize from talking to people, the phone calls I have, the interactions I have that
3 things aren't working well. How do we get to a point that they work well before
4 identifying new projects to put on top of that? That is the point. It's not to be derisive. It's
5 not to be critical. It's to say, how do we work together to get to the right point to be
6 successful? And so, I apologize if it was taken as being in some way, shape or form
7 critical of staff, because I am in no way saying that. I want to know how we make it
8 better, working together. Mr. Robinson.

9
10 John Robinson,
11 Well, it would help if we wouldn't lose a whole day at the building because one of the
12 pipes broke and it was flooded. And that's a serious issue.

13
14 Councilmember Knapp,
15 It is.

16
17 John Robinson,
18 The problem we had at the Board before, which is before Royce's time, is that we
19 hollowed out the administrative structure in many ways. We do not, did not have
20 adequate document handling procedures, that requires a – staff. We have to have the
21 spots, we have to fund them, we have to hire the people. You could not find things in
22 the building. What I , as a regulatory attorney, what I perceived as going on in the
23 building in terms of document processing, the space available, the – structure, the files,
24 I said that in my reappointment hearing, I testified about these things a couple of years
25 ago so that part of our problem of getting things done right, the timeliness issues, we're
26 committing tremendous resources to putting the administrative procedures and structure
27 in place that will meet the demands the Council has put on us as a part of some of the
28 unfortunate events that occurred a year and a half ago. That's extremely time
29 consuming. One of the most time consuming things imaginable is drafting a new piece
30 of legislation or drafting regulations because they have to be very precise. It's worse
31 than drafting a master plan. It's worse than drafting a specific report that comes through
32 the Development Review Division and all of those things in themselves are getting more
33 complicated. So, the shortfall problem I see is that we're simultaneously trying to
34 restructure and rebuild the organization, train in new traditions and administrative
35 procedures and sheer physical resources at the time that we are already in the hole on
36 the substance because of the virtual collapse of the agency about a year and a half ago
37 in June and July as you recall. So, it's hard I think partly for us to give you specific
38 reasons without going into a great deal of nitty-gritty detail that I see in a relatively well
39 run agency every time I go to work in the morning but it's because it has tremendous
40 administrative resources supporting the people that are in the decisional staff like I am.
41 We just don't have that at the Planning Board yet and it's very crippling and it's very
42 hard on staff morale. One of the most important things we have done is gotten the
43 additional space that's over on Spring Street and then we have created additional space
44 inside and one reason we did that and moved people around is first of all so we could



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1 clean the building and secondly so that each individual employee would be required to
2 clean out their cubby and get the files structured. I mean, it's that, it was a conscious
3 decision to restructure the building in part to accomplish that.

4
5 Councilmember Knapp,
6 Right.

7
8 John Robinson,
9 That's tremendously resource consuming.

10
11 Councilmember Knapp,
12 Sure.

13
14 John Robinson,
15 It takes days.

16
17 Royce Hanson,
18 And they're other elements that, I know you want to talk about budget; but the, making it
19 possible to build the kind of administrative and management staff that John is talking
20 about means that we of course have to have the people to do the day-to-day work that
21 the managers then supervise. Now, we have got a situation right now in some divisions
22 is managers are both having to do some of the detail work themselves, writing reports
23 and things of that nature and finding time to recruit the new people who they need to fill
24 the vacant positions. They are working extraordinarily hard on this. And if, it is critical
25 that we fill these positions but it is critical to have the positions to fill. If we don't, we
26 won't ever get out of some of the holes that we've got. Because we do need the ability
27 of managers to manage. And to not be, to have their time diverted to doing some of the
28 work that we need additional staff to do.

29
30 Councilmember Knapp,
31 Those positions are in your budget request?

32
33 Royce Hanson,
34 We have those positions in the budget request. I am hopeful that by the time we get to
35 the budget that we will have several of the additional positions filled and be down to
36 what would be regarded as a normal turnover in the agency. I think we'll be there.

37
38 Councilmember Knapp,
39 I know all of my colleagues have questions. My last one, I don't need an answer to this
40 one specifically, but in the chart that you put in that shows the work years associated
41 with the various functions; it would be helpful if we could actually see where the
42 vacancies that you've identified correlate to the various functions and the work years
43 that are already here – clear to see where those fit.



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1 Royce Hanson,
2 We can do that.

3
4 Councilmember Knapp,
5 Okay. I will turn it over to the rest of my colleagues. Thank you.

6
7 Council President Praisner,
8 Councilmember Ervin.

9
10 Councilmember Ervin,
11 Good afternoon. Mr. Chairman, not to be one to pile , but I'm going to pile on just a little
12 bit.

13
14 Royce Hanson,
15 That's alright.

16
17 Councilmember Ervin,
18 And my question has do with the delay in master plans. Specifically Kensington
19 because it's been delayed 3 times now. And I just want you to speak to that. And then
20 on to the Wheaton CBD and why I think that it's really important not to continue to delay
21 these two specific master plans. I want to know why the delay in Kensington, this will be
22 the third time.

23
24 Royce Hanson,
25 We just don't have enough people to do it and to do the other things. Also we
26 accelerated the growth policy and in accelerating the growth policy we took people and
27 moved them to work on that so that could come out fast.

28
29 Councilmember Ervin,
30 Right. I do remember asking this question very well, that would that create, would the,
31 your work plan be held up if you accelerated and you said no or somebody did and I
32 remember this because it was my first or second Council; am I right?

33
34 Councilmember Leventhal,
35 Ms. Ervin, you are so right. It is vivid in my memory as well.

36
37 Royce Hanson,
38 If I said that; I was wrong because there are only so many that we can do at one time.
39 And we can, again if we move up some plans it means in some cases moving others
40 back. I don't know, Faroll, you want to comment on this?

41
42 Faroll Hamer,
43 I just wanted to say, I mean, I don't think it was just the growth policy. I think it was, I
44 mean, I put a list in here of things that just pulled from my memory in a couple of



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1 seconds that I can remember that were unprogrammed work requests and those
2 included a steady, information on parking waivers for elderly housing, the revisions to
3 the forest conservation, oh, we created the Forest Conservation Task Force and staffed
4 it for quite a number of months and then as a result of the task force, we are now
5 working on the forest conservation revisions to the law, that was not in the work
6 program. The Planning Board's rules of procedures, the Planning Board's rules of
7 enforcement, the development review manual, the agricultural policy working group, we
8 staffed that for a number of months over the summer and that was fairly time consuming
9 and then we created staff recommendations based on the Ad Hoc working group. Also
10 the road, working on the road code and the mansionization issue and easement
11 enforcement particularly forest conservation easement. So, those were things that we
12 needed to deal with. There was nothing there that wasn't worth doing. There was
13 nothing there that could not have been responded to but all together cumulatively they
14 represent a significant amount of time that was not programmed in the work program.

15
16 Councilmember Ervin,

17 One follow up, it just appears to me that master plans, just in my own opinion, constitute
18 the bread and butter of the work and to keep delaying the master plans year after year
19 after year, everything's important, okay, but it seems to me like we're not paying
20 attention to very basics.

21
22 Royce Hanson,

23 I agree with you on that. I think what I said earlier, if we don't do the master planning
24 right then it's hard to do the regulating that needs to be done because we're trying to
25 regulate in conformance with the master plan. If master plans are out of date, well,
26 that's a serious problem.

27
28 Council President Praisner,
29 Are you through Valerie?

30
31 Councilmember Ervin,
32 Yeah.

33
34 Council President Praisner,
35 Before I call on my other, next colleague, clearly I think the Councilmembers are
36 concerned across the Board about the master plans, but also we had asked you to look
37 at a different format and I think you have responded in a different format and different
38 way of looking at master plans given the status of where we are as a County.

39
40 Royce Hanson,
41 Yes.

42
43 Council President Praisner,



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1 There are also, I guess we need to discuss at some point what is the appropriate level
2 of response for specific questions and what's the time associated with. The question
3 about what is the status of waivers on senior housing and how many there have been,
4 in my view, is staff information that can be provided without perhaps the need for it to go
5 to the commission to have to comment. It's background information to be provided so
6 that we can see whether we think anything warrants any further action or to gather
7 additional information. If these things are requiring significant work, then we need to
8 know what is the workload issue and we need to decide maybe how we shape our
9 questions so that you can respond in a way that provides the information without going
10 through an elaborate study. Because, in many cases, from my conversations with my
11 colleagues, there are elaborate studies and there are questions that need to be
12 answered in order to shape whether individuals want to change policy not to do a policy
13 study before we've even determined the answer to the initial question. So I think we
14 need to think outside of this meeting about how we respond to what I believe are
15 legitimate questions and concerns that come up that may not be exclusively
16 commission responsibility, may also be other department's responsibility where we're
17 trying to get the handle on what is the process now so that we can ask a question of
18 whether we want to change policy --.

19
20 Royce Hanson,
21 Madame President.

22
23 Council President Praisner,
24 --without requiring the commission to go through a lengthy study in order to answer that
25 question.

26
27 Royce Hanson,
28 There is no process now and that's a problem.

29
30 Council President Praisner,
31 That's what we need to correct.

32
33 Royce Hanson,
34 And what we need to have, and I really implore the Council on this matter, is that when
35 you have a substantial request that is more than you think a staff member can just
36 respond to sort of by what's on their desk, if you could please channel those requests
37 through my office, through Joyce, or through me directly, or through the Planning
38 Director's office, then we can come back to you and say this is going to require
39 substantial work effort that will, if you want this much, this is what it will require and it
40 may help you redefine what it is you want and it allows us then to deal with this because
41 one of the things that, a request from Council is considered an imperative and therefore
42 it's likely that a good bit of time is going to be spent on it.

43
44 Council President Praisner,



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1 I don't have any problem with having the conversation back and forth about what is
2 actually being requested and fine tuning it, but I also think you all need to look at
3 whether you, the commission, needs to formally respond to the Council or whether it's
4 adequate to have your staff do whatever comments are necessary without it being a
5 policy discussion and review by the commission. It's not necessary. And I think you
6 might want to look at that piece from your perspective as well because we have great
7 confidence in the information that comes from staff and we don't, it hasn't risen, the
8 question to a policy question, it's information that we're looking for in order to have a
9 conversation. And we also I think need to look, in my perspective, at how many staff are
10 coming to whatever meeting it might be in order to know whether that is an adequate
11 use of staff time as well. The next, I'm sorry, Mr. Robinson.

12
13 John Robinson,

14 I'm sorry Madame President. I fully agree with those remarks. In fact we were just
15 discussing that perhaps there is less need for all staff to be at every meeting, at every
16 session with the Council. But, if I might just take one minute of your valuable time to
17 pursue what Dr. Hanson was saying, is if the issues could be well defined and go
18 through a central point I think we have a problem with quality control in the agency and
19 that the staff may have under kill or overkill and it's been my experience if you need a
20 central point, that the request come through so that the issues could be more
21 adequately defined. I agree with my colleague, Dr. Bryant that many of those things do
22 not have to go through, require Board review.

23
24 Council President Praisner,
25 Councilmember Floreen.

26
27 Councilmember Floreen,

28 Thank you. Royce, you asked at the beginning that we focus on the big picture and it's
29 hard for us to not, to focus on the big picture because we all have, you know, our
30 specific issues. And you know, I'm lucky enough to be able to spend lots of time with
31 you in the PHED Committee but I do think there are some basic principles that we need
32 to get our heads around. One is that we as a Council; I can't say this to my colleagues
33 really, but I can say to you, we can't solve all the problems that we identify out there at
34 once. I mean I think collectively we view ourselves as the custodian of the community,
35 the present and the future and we're all committed to taking the actions that will
36 preserve and protect what's here and help us grow appropriately and after that, you
37 know, we start arguing. But I do think it's important for us to focus on basics and apart
38 from the, we know you have had a terrible staffing challenge and I think we're totally
39 sympathetic to the way that that plays into delays at times. But I do think, what is of
40 concern to me and I think collectively to us and what drives some of the other burdens
41 that we place on you is the master plans and everyone looks to the master plans as the
42 bible for their community and if something is proposed that's inconsistent with it, people
43 get very concerned and they say well fix the master plan. We had that advice earlier this
44 afternoon on Workforce Housing kind of issue. And I think we feel somewhat trapped,



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1 we end up, and we've had this conversation numerous times, we end up changing the
2 Zoning Ordinance which you want to fix altogether, but we end up changing the Zoning
3 Ordinance to resolve master plan issues because you can't get to them. And I think, I
4 say to you, I think our primary focus needs to be cleaning up the existing master plans,
5 advancing the process in a way that is more streamlined and perhaps involves less staff
6 and a different way of looking at it, perhaps fewer words that people will need to hang
7 their hat on for any argument but that sets a standard for how we're going to proceed
8 and then get to the Zoning Ordinance issue, the implementation document that forces
9 us to get twisted, I think, in terms of how we approach problem solving collectively. I
10 think those are the two fundamental issues that we see and what concerns me and I
11 guess we're not really talking about your work program that's proposed but you have got
12 a number of new initiatives that you all come up with that override our initiatives which
13 are master plans. And, you know, there is a whole list of them and we could say, well,
14 you're not moving them forward, actually you're proposing to delay a number of them a
15 year. And I think we need to build a better bread box and White Flint was supposed to
16 be that. In fact, it was pretty much supposed to be done by now and I gather that you
17 have advanced that, in your head at least, more than is shown in the staff memo.

18
19 Royce Hanson,
20 That's correct.

21
22 Councilmember Floreen,
23 I think that's a great thing. But it was supposed to be different. And maybe we just can't
24 be as perfect as we would like to be because perfect today is going to be different
25 tomorrow and community expectations are really based on these master plans. And I
26 think, you know, I'm very concerned about what we've done in the past. I, we've tried to
27 do things right but we've been looking to you really for direction on how we do master
28 plans that are responsive to community needs that are nimble enough to allow us some
29 flexibility that we don't have to rewrite the Zoning Ordinance every other week, and
30 burden your staff in that regard. But, we're not getting there. And if it were just people,
31 bodies, I'd say well this is what we have to live with. But, you've got a couple of new
32 initiatives here that seem to be overriding some of the things that we have committing to
33 our communities like Kensington, like, you know, a number of them on the list. And I
34 think we need to figure out a better way to do that. Surely, some of the other just boring
35 things are support to the Board of Appeals that we need you to provide and --.

36
37 Royce Hanson,
38 I'm sorry, I'm not following you on that one.

39
40 Councilmember Floreen,
41 The staff reports and so forth that need to get to the Board of Appeals so that they can
42 do their work.

43
44 Royce Hanson,



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1 Let me tell you something about, this is one thing that really frosts me.

2
3 Councilmember Floreen,
4 Okay.

5
6 Royce Hanson,
7 (laughter) The Board of Appeals sets its hearing date when it receives the application. If
8 the Board of Appeals would set its hearing date when the staff report is ready, their
9 problem would be solved.

10
11 Councilmember Floreen,
12 Okay, well, that's a proposal to get that addressed. And, if we can do that in a
13 predictable fashion, let's talk about doing that. Another issue I think that's been in the
14 hopper for a long time is the implementation issue of all this stuff, that's what you, that's
15 a lot of your work in terms of working with, and by that I don't mean implementation per
16 se, but working with the other agencies in terms of identifying lead agency. And I think
17 you're getting there. And I think that --.

18
19 Royce Hanson,
20 We're getting there. Tim and I have set up a regular monthly meeting of department
21 heads. We had a meeting this morning actually, the second one with our department
22 heads and the County department heads that have the greatest level of interaction with
23 us.

24
25 Councilmember Floreen,
26 Yeah.

27
28 Royce Hanson,
29 And at least we're at a point now when people are talking to each other at the
30 department head level and identifying issues in advance so that we can begin to deal
31 with them and try and get people involved.

32
33 Councilmember Floreen,
34 I think that's really, really important. I thank you.

35
36 Royce Hanson,
37 We did actually have some discussion this morning also about the lead agency issue.
38 And, I think the point there is both getting the agencies to respond promptly to the
39 review so that the Development Review Committee can actually have all of those
40 responses in hand when it meets. Secondly is, if there remains disagreements among
41 agencies, it gets back to the same issue that you're dealing with on the road code, is
42 who's going to make the decision then of how you reconcile things. Because if you give
43 an agency final determination, let's say on roads; and that determination is contrary to



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1 what you are trying to achieve in the subdivision, then do you want DPWT to have, to be
2 the final word on that.

3
4 Councilmember Floreen,
5 Yeah.

6
7 Royce Hanson,
8 Probably has to be the Board.

9
10 Councilmember Floreen,
11 And those points, you know, we'll hammer out bit by bit. But, you know, I think we need
12 to focus on current master plan program. I think we need to elevate the Zoning
13 Ordinance revision to a higher level. And I think you need to assess how you allocate
14 staff. We don't, everyone said, we don't need a whole crew coming for every meeting.
15 Which tends to happen. We've counted 12 additional staff people in the audience today.
16 Bless them. They're wonderful people and they do terrific work but I don't think the
17 Council needs them here today.

18
19 Royce Hanson,
20 You're probably correct about that, on that end, I think people have come traditionally
21 because they sort of get a sense of what you want.

22
23 Councilmember Floreen,
24 And we appreciate the entertainment that we provide. (laughter) But I, you know, you
25 have, I remember when we had this conversation about the growth policy the other day
26 at least in Committee, you had like 16 people working on that thing.

27
28 Royce Hanson,
29 Yes.

30
31 Councilmember Floreen,
32 And bless them, that's great, but is it, we probably don't need War and Peace. Oh,
33 maybe we do on that.

34
35 Royce Hanson,
36 On growth policy you want it good, you want it fast.

37
38 Unidentified
39 And right.

40
41 Royce Hanson,
42 And right.

43
44 Councilmember Floreen,



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1 You want it right but you also don't want to exclude your ability to proceed in every other
2 front and that's where i think you can help us in assessing the level of, you know, we're
3 all used to a tremendous level of excellence from this agency and we will continue to
4 receive that, but maybe given the time that we're in, we can find ways to streamline our
5 responses. And at least try it out. Find ways to streamline our master plans at least give
6 it a shot, so that we can move through a process that is a little more responsive and not
7 that you're, I mean I know there is attention there, but that keeps things on track.

8
9 Royce Hanson,

10 We have suggested a couple of changes to master plans which is to provide either a,
11 some short term studies to make limited amendments or smaller area changes to
12 master plans. And I think that can be helpful. I do want to caution the Council on one
13 thing. You want master plans faster. You want master plans that deal with, and those
14 that deal with places like White Flint and Wheaton are good illustrations I think. They
15 do, if they're going to be useful in guiding development decisions and if we're going to
16 get out of our development the kind of urban design that we all say we want; they will
17 require some greater detail than traditional master plans. That takes a good bit of time
18 and effort by staff working with property owners, working with citizens in the area to try
19 to balance these matters. And I don't want to give the impression that this is all that
20 simple.

21
22 Councilmember Floreen,
23 No.

24
25 Royce Hanson,

26 And I think to the extent that we don't bake stuff fully before it gets to you then the time
27 you spend on the master plan will also be extended. I'm perfectly willing to see that we
28 can do everything that we can do to improve the time with which we deliver the plan to
29 you. But I would really like us to be able to deliver well thought out plans to you.

30
31 Council President Praisner,

32 Royce, I think, if I can chime in because Nancy and I have had these conversations, I
33 understand you're dealing with smaller areas but you're also dealing with more
34 specificity. But I think the point Nancy makes is also one of the specificity of what is in
35 the plan and the drafting of whatever may be documents that precede the planning
36 process and the absence of the use of the latest technology which has been my point,
37 that would help you to both engage the community and the private sector to look at
38 different options without taking 3 months and 3 meetings or 30 meetings to go through
39 that process. And I think there are ways to both get at the specificity without the length
40 of time that it may have taken to get there and there is also some ways in which you
41 look at the drafting of the actual documents to deal with some of the issues that may or
42 may not need to be in there when you are talking about some issues or some of the
43 areas that we are talking about. I think Mr. Bryant, Commissioner Bryant wanted to
44 comment but--.



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Allison Bryant,

Yes. Quickly, we had a decision just recently about that where I, we're talking about the master plan process informally and I indicated that I had the pleasure of receiving a master plan for portions of the city of Miami and I indicated that we needed to look at how that was done because essentially what was done is that the technology that was available, they actually developed the area with the proposed buildings, the recreational activities, the roads, the trails, everything that they wanted in that particular section was designed from an artificial standpoint and that became the basis of having an interaction with the community in terms of whether or not this made sense to them. And so the master plan, unlike ours, was not as massive as it can be, it was relatively thin, but at the same time it gave the specifics in terms of what the residents wanted as it related to those particular things. And so, that's not to suggest that the way we do master plans, from my perspective, is not effective but there are some other ways of being effective too and I got the impression that although this was not a formal conversation, that there was interest expressed on the part of the Chair and I thought that my colleagues also thought that it might be worth looking into.

Councilmember Floreen,

Well, I think we would be interested in looking at some different templates. Well, I would and I really do think we need to have a serious conversation with the amount of detail. I think, the words are so important to everyone, have become so important and that's why the Zoning Ordinance, as impenetrable as it is, is the source of so much regular attention. And so how those two interact, how we achieve these goals, understanding that the property owner you talk to today or the community member you speak with today won't be the same one who's here when this stuff is implemented perhaps in 5 or 10 years.

Royce Hanson,
That's correct.

Councilmember Floreen,

And that is our collective challenge and that's why I get worried when I hear about detail because I worry that, you know, we are, we all - Shady Grove. We all agreed and just a couple of little assumptions to be worked on.

Royce Hanson,

One of the things I think where these things do fit, one of the things I am hearing you say, is that okay, one of the things that you want done over the next several years is you want to see a whole set of master plans completed. And you would, I would assume that what you would like to have is a master plan on your plate all of the time; is that correct?

Councilmember Floreen,



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1 If that gets us to the point where we focus on --.

2
3 Royce Hanson,
4 I think we can achieve that.

5
6 Councilmember Floreen,
7 The PHED Committee can't be stopped, really. But, you know, the, we appreciate all
8 these challenges.

9
10 Royce Hanson,
11 Yeah.

12
13 Councilmember Floreen,
14 But, you know, everyone, you know, this is my bible, this is what my community --.

15
16 Royce Hanson,
17 I agree with you entirely on that.

18
19 Councilmember Floreen,
20 --and when I talk to the folks right outside the Silver Spring CBD who are quite
21 hysterical about their traffic challenges, I'm not really the best person to say, well you
22 know, there's this master plan that lays all of this out. The challenge is having some
23 understandable criteria that a community buys into and can watch it develop and feel
24 that it has been a part of that. We can all collectively do a better job of communication
25 on the subject I suspect but helping our communities feel that they are a part of this
26 planning process in a way that will get this stuff moving forward --.

27
28 Royce Hanson,
29 I think there are some things, for instance Ms. Praisner has suggested the use of some
30 new technology and the staff is looking right now at some of that technology and how it
31 can be used to facilitate decisions.

32
33 Council President Praisner,
34 Not new anymore.

35
36 Royce Hanson,
37 Well, there is some, there's a new generation of --.

38
39 Council President Praisner,
40 Yes, that's right.

41
42 Royce Hanson,
43 --that the information that you handed us.



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1 Council President Praisner,
2 There is a new version.

3
4 Councilmember Floreen,
5 I will leave this to the rest of my colleagues but, I agree we need to talk about basics
6 before we talk about the other things.

7
8 Royce Hanson,
9 Well, and what I'm hearing, and I want to make sure that we have got this correct, is that
10 what we really want to look at is master plan production schedule.

11
12 Councilmember Floreen,
13 Yes.

14
15 Royce Hanson,
16 And if we agree on that master plan production schedule, what I want to look at is our
17 schedule for getting it to you. I'll let you take responsibility for what happens to it after
18 that. (laughter) But we want to look at our schedule for getting the stuff to you.

19
20 Council President Praisner,
21 Right.

22
23 Royce Hanson,
24 So that we can schedule and staff or use consultants or whatever is necessary to meet
25 that schedule and we should be able to tell you what it will cost you to meet that
26 schedule.

27
28 Councilmember Floreen,
29 And you should tell us when we're messing with it.

30
31 Royce Hanson,
32 I will.

33
34 Council President Praisner,
35 There are other Councilmembers who want to comment so I don't want to leave the
36 impression that everybody believes that the only thing you should be working on is
37 master plans. But I do think that every Councilmember has indicated in the past, as well
38 as currently, that we have to have a different way in which we approach master plans,
39 that we're not looking at the undeveloped green areas of previous master plans, and
40 that they may look different, they should take a different amount of time and they should
41 take advantage of the technology in order to focus. And the other piece I don't want to
42 lose sight of is a concern that we've all raised that the old process of master plans is
43 built on a predicated version of community input that does not capture everyone in this
44 community's capacity to participate. And we need new versions of the, even the old



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1 master plan process in order to make sure that we capture input from the broader
2 community of Montgomery County. So, if you ask me what I want, I want a community
3 in the future that has a full appreciation and participation in thinking about the life of this
4 County both from a land use perspective and from a parks perspective and also knows
5 how to access the Planning Board and its staff when it has questions or issues, whether
6 they are associated with parks or they are associated with land use or something that
7 they see being built in their neighborhood all of a sudden, that they have a way of
8 meaningfully accessing and engaging and knowing what their rights are and what the
9 role and responsibilities are of government. So, from a vision perspective, that's the
10 Montgomery County that I want to see in the future that has more people
11 knowledgeable and more people engaged in whatever is the issue we're looking at from
12 a land use or a policy perspective that is the responsibility of the Planning Board.
13 Councilmember Berliner.

14
15 Councilmember Berliner,
16 Thank you Madame President. At the appropriate time, I would like to move to amend
17 this work plan in a particular manner so I defer to you as to when that time would be.
18 But to begin with, I would like to say, Dr. Hanson I consider you to be one of the finest
19 public servants this County has the privilege of having served us. So, I --.

20
21 Royce Hanson,
22 You have only known me for a short time.

23
24 Councilmember Berliner,
25 (laughter) I know, and if you keep using that --.

26
27 Council President Praisner,
28 for a short time.

29
30 Councilmember Berliner,
31 That's right. But you won me today with that wonderfully vivid image of running down
32 the street with your pants half down.

33
34 Unidentified
35 Half up.

36
37 Councilmember Berliner,
38 Half up. See I only saw the half down part. That's why it was so vivid.

39
40 Unidentified
41 It's a disturbing image.

42
43 Councilmember Berliner,
44 Disturbing.



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Unidentified

Fundamentally, it's the cup half full, is it half empty, we'd like to know.

Councilmember Berliner,

Madame President from my perspective, there may be another time in the near future where we could have a full conversation with respect to really the dialogue that I think you are seeking from us here, which was our larger vision for our County 4 years from now and the role you would play in it. I guess what I would like to ask, notwithstanding the time constraints, if you would be so kind in a very brief period of time, to share with us as our lead professional with respect to this, and I would ask that you keep your answer short because my colleagues all have questions et cetera that they want to pose. What is your vision? What do you think we should be focusing on as we move forward so that while we focus on the nitty-gritty that we all feel compelled for legitimate reasons to focus on, that we also have the vision that you carry inside yourself that I would like access to as to going forward, the picture of Montgomery County.

Royce Hanson,

Well, I think there are about 3 or 4 things that I consider fairly fundamental and the Board has talked about these. And we have tried to deal with them in the coming budget issue as well. Whatever we do with master plans as individual master plans, we are going to be substantially constrained for the indefinite and I think for the, as far as we can see into the future, my concerns for environmental quality and for energy consumption. I think these are going to have profound effects on the form that development takes and the location of development in particular. And they bring together a whole lot of things. They bring together, in short, physical and environmental issues and they bring together transportation questions and they bring together urban design issues. Clearly effective master plans, particularly for the more dense places in the County, will require much greater attention to urban design than anything that we have done in the past. In order to achieve great architecture in some of these places and Montgomery County is famous for a lot of stuff but great architecture is not one of them. Without trying to control architecture, without trying to control building design, what we need to do is to encourage it through the use of design at the plan level so that people realize they need great architects to work in this kind of environment. We have a very serious problem in affordable housing that is being addressed in part through the task force that the Executive is proposing to establish, or has established now, on affordable housing. But from a planning perspective, we have a whole ring of suburbs that developed between the 1940s and the 1970s where the great stock of affordable housing in this County is located. And our master plans need to deal with that in the context of a set of policy plans that set the, sort of set the general standards that we want to deal with that. Now all of this also relates to the Zoning Code which I have described before as a lawyer's relief act. Reforming the Zoning Code is very important to putting in place the things that we say we want to have in the master plan, so that producing the Zoning Code revision so that we are able to, on the one hand facilitate



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1 the production of well designed new and redeveloped places and protect the community
2 qualities in these older communities that now are threatened on the one hand by
3 substantial redevelopment and on the other by tear down and infill becomes really the
4 act that we have to deal with. And I guess the problem that, you know, I'm not having
5 any problem with us producing master plans for you, but I don't think that we, I don't
6 think it's to your benefit, I don't think it's to the benefit of the County to focus solely on
7 that and not also do some of the other policy level work that should be guiding these
8 master plans, not only the ones that come on to your plate in the next couple years, but
9 the ones that we're going to have to begin to put out over some longer period of time.
10 You know, I think, when I talked to you about this job in the first place, I said that my
11 view of the Planning Board, is it is the County's trustee of the future, and that means
12 that we have to think to about the future and we have to try to do our best to both
13 envision that future with enough modesty that we're not putting it into a rigid frame work,
14 that we have room for improvisation as we go along, but also that we're laying out the
15 kinds of things that will shape this County, not just in our terms of office, but will shape,
16 most of what you do with plans in the next 4 years will not show up on the ground for 20
17 years. So we have got to think about it in those terms. And, I'm sorry, maybe I took too
18 long to answer the question.

19
20 Councilmember Berliner,

21 No, Dr. Hanson, you did not take too long. I find that I have much less value to add in
22 these kinds of conversations quite frankly than you do so I am eager to hear from you
23 and your thinking with respect to where we need to go and how we need to focus. And
24 my hope is that I, I know we have had conversations in the past with respect to whether
25 to expand the number of conversations we can have of this nature. I think it's inevitable
26 that when we meet with you only twice a year, our focus is going to be where is White
27 Flint, where is Wheaton, where are we on the projects that we hear from our
28 constituents everyday with respect to? So my hope is that we could create another
29 forum where you could share with us in this sort of broad terms, where we need to be
30 thinking about because I certainly don't have the grounding in the subject matter to
31 naturally get there on my own and I would be welcome for your guidance with respect to
32 that.

33
34 Royce Hanson,

35 We would really welcome that.

36
37 Meredith Wellington,

38 Could I comment on that too please? I think that would be particularly useful now. I
39 hesitate to say this as my last semi-annual because --.

40
41 Council President Praisner,

42 I was going to make note of that.

43
44 Meredith Wellington,



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1 --it's been quite a semi-annual, but we do need to talk, I think when we look back even
2 in a year or year and a half I think we're going to realize that a lot more has been going
3 on, a lot more change has been occurring than we understood. Certainly from this
4 commissioner's point of view, as problems unfolded and as we started taking on really a
5 multitude of tasks, development manual sounds boring, rules of procedure sound
6 boring, but they're not boring and those, just that process revealed other issues. So, the
7 minute that Mr. Knapp spoke, I was thinking, I looked at the notes I wrote before we
8 started and I said, I wrote down, may seem like there are more problems or issues now
9 rather than fewer. Because, that's what's happened with this top down review. And so,
10 while we have been focused really, really in-depth on development review now we are
11 finding master plans are not where they need to be. And also, to be honest since this is
12 my last semi-annual.

13
14 Unidentified

15 You can start to be now.

16
17 Royce Hanson,

18 (laughter) Meredith has always been reticent to express herself.

19
20 Meredith Wellington,

21 I think other Councils hadn't been as interested in master plans. Certainly not as
22 pressing, I've certainly never been to a semi-annual where virtually every
23 Councilmember said, I mean, many people said it's the bible, it's the, so, it's not that
24 they weren't interested and it's not that it's never, it hasn't been a centerpiece of
25 planning, but I'm hearing from you a renewal as saying this is how we plan in
26 Montgomery County. Yes it may need to be changed, it needs to be modernized, it
27 needs to be updated but this is how we do it. Don't force us to go the ZTA route, get
28 these plans to us on time so that we can do things the way we have done in time
29 honored tradition in Montgomery County. And that's music to a Planning Board
30 member's ears. Something that this Board can do, but I think, just to repeat a little bit,
31 even in 6 months you will see that some of the stuff that's been very internal, it's very
32 hard to track is going to result in a lot of improvements and a lot of things that, even
33 return phone calls and things that you all are concerned about. So, while there may be
34 still some cause for concern there is a lot of cause for hope and excitement and I want
35 to thank you all that I got the serve on this commission.

36
37 Council President Praisner,

38 Well, Meredith, I was going to make some comments later and I still would like to
39 reserve that opportunity knowing that this is your last meeting as a commissioner of this
40 type of nature. But, I do have to take exception with your assessment that previous
41 Councils were not interested in master plans. I think where there was a difference of
42 opinion among Councilmembers is whether we should rewrite the Zoning Ordinance or
43 not and there were differences from a standpoint of whether the Zoning Text
44 Amendment introduction process was adequate or not and may have been. But I have



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1 yet to have heard and been at a meeting where Councilmembers did not ask or raise
2 concerns about the status of master plans or trying the put new master plans on the
3 schedule or raising some issues about them. So that may be because we focus so
4 much attention in the conversation but every conversation I have seen as a
5 conversation of this nature, has had master plans as part of it, of the process, either
6 concerns about how they are being conducted or definitely the timetable. That's the
7 focus of the staff packet for us every year. I think if, Roger?

8
9 Councilmember Berliner,

10 One more point and I again defer to you Madame President as to when to raise this but
11 it seems as if this as good a time as any.

12
13 Council President Praisner,
14 I think it is.

15
16 Councilmember Berliner,

17 Dr. Hansen you alluded to the sorts of pressure that the down County, in particular is
18 feeling with respect to redevelopment, infill development, you're aware of the OLO
19 report.

20
21 Royce Hanson,
22 Right. Good report.

23
24 Councilmember Berliner,

25 It was an excellent report. And as you appreciate and as the conversation we had in the
26 PHED Committee, it is something that the Bethesda, Chevy Chase community that I
27 represent in particular is feeling every day. Every week that goes by is too long from
28 their perspective to more fully address this issue. And the OLO report of course begged
29 the question as to whether or not current policy is in fact appropriate and there are
30 many of us who believe that it isn't. I have had conversations with you and I have had
31 conversations with your top staff with respect to joining with me and co-convening a
32 informal working group task force, the terminology is not important to me, but that would
33 work with the citizens of our community as well as the building industry and see whether
34 or not we can come up with some reforms that are appropriate and I have been
35 encouraged by the conversations we've had and the response we've had from staff that
36 they are, your staff is eager to be involved with respect to this. So, I turn to Madame, the
37 President of the Council as to whether or not one should amend the work plan per se to
38 allow this effort to go forward or to do it in the context of the budget conversations that
39 you are about to have with the PHED Committee. Quite frankly, Madame President, I
40 don't care the vehicle, I just care that I have committed to being in a position to report to
41 this Council before the end of the year with some recommendations to address this
42 matter. And I would hope that I would have my colleagues support to bring that about.

43
44 Council President Praisner,



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1 Right, as I indicated to Councilmember Berliner, my preference at this point, because
2 the work plan is not really a plan until we have finished the budgetary process, is to with
3 the support of your colleagues or at least a majority of the colleagues to ask the
4 Planning Board to come back in the PHED Committee discussions to tell us, given your
5 understanding, and there may be some private conversations that need to occur, your
6 understanding of the issue that is being asked, that you're being asked to participate in.
7 What kind of personnel allocation and what kind of timeframe, given the timeframe that
8 we're talking about, what kind of personnel allocation would be associated with that so
9 that we can look at that in the budget context and have a better understanding? The
10 work plan is really not an adopted work plan until we have approved the budget.

11
12 Royce Hanson,
13 Right.

14
15 Council President Praisner,

16 And, whatever we do today to say go forth and study or go forth and produce is only as
17 good as what we do with dollars and cents in a couple of weeks. So, I think it would be
18 better, my preference as Chair of the PHED Committee would be to have you indicate
19 and have your colleagues indicate, if there is an objection we can take a vote, but if
20 there is no objection we can do it by consensus to ask the Planning Board to bring us in
21 the PHED Committee discussion of the budget, what would be the amount of effort
22 needed from your staff's perspective to respond to the issue that we are seeing in the
23 older areas of the County affectionately known as mansionization. And I think before
24 you can respond, you probably need a little piece of paper that would, given the
25 conversations we have had about what are we asking you to do and how are you
26 responding, it probably would will helpful to have a piece of paper that lays out the
27 specifics of what would be expected and what you are proffering as far as support so
28 that we could better understand it and you could better understand it and then we could
29 have that during the budget deliberations which would be taking place in two weeks. So
30 that gives you enough time to hopefully look at this issue and get back to us.

31
32 Royce Hanson,
33 I'm assuming that what you would like to have us do, for the budget, is to present you a
34 fairly detailed work program for the ensuing fiscal year.

35
36 Council President Praisner,

37 I think Councilmember Berliner has the concept of the work program of what he has in
38 mind for this work, that it would be helpful for you to respond to, as to whether you think
39 this is adequate, not adequate, what you think is the issue from a standpoint of, is the
40 question properly posed or is then some other issue we're not thinking about and how
41 much staff would be associated with that. And if you Councilmember Berliner can take
42 pen to paper and share that with the Planning Board, they can react to it and also at the
43 same time offer whatever other suggestions you may have as a commission and staff.
44 Then we can look at that from a budget implication. If it all could be coordinated through



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1 Marlene, then we know it's centrally done and we're all working from the same
2 documents. And unless there is Council objection, we will do that. Councilmember
3 Berliner.

4
5 Councilmember Berliner,

6 I am persuaded by the compelling logic of the President of the Council and the Chair of
7 the PHED Committee that this is the right course of action to take. Thank you.

8
9 Council President Praisner,

10 George Leventhal, Councilmember Leventhal.

11
12 Councilmember Leventhal,

13 Madame President, thank you very much. First of all, I want to start with some praise.

14 Royce Hanson, I'm really glad you're in this position. You bring great gravitas and
15 stature and I certainly have confidence that you understand some of the naughty issues
16 about how the place should be run and are able to provide strong direction to your
17 managers so I'm very glad you're there. I particularly want to call out the names of three
18 of your staff people who have been very responsive and helpful to me and those are
19 Joyce Coleman, Mary Bradford and Nancy Lineman. They've all provided me with easy
20 access and good information promptly and responsively and I just want thank them and
21 of course I want to acknowledge Faroll Hamer who stepped in at a very difficult time.

22 And all of you, commissioners and staff, have very difficult jobs, almost as difficult as
23 Councilmembers but we share many things in common. We're tugged in a lot of
24 directions, we're trying to satisfy multiple constituencies many of which vehemently
25 disagree with each other and that's the nature of the business and so, you know, it'd be
26 a tough place to work I'm sure. When Mike Knapp asked his question about morale, I,
27 you know, brought to mind the cliché about, you know, until further notice the beatings
28 will continue until morale improves. (laughter) So I don't want to beat up on you. I really
29 do want to, I really do want to thank you and appreciate you. I have a couple of
30 observations I want to make and then I think I have just one question. I support Roger
31 Berliner's initiative on mansionization and I voted for the Council President's initiative to
32 speed up the growth plan and that was her big first initiative of her presidency. One of
33 the initiatives of my presidency a year ago was the item which is in your work plan
34 which Mr. Knapp and I requested which is an inventory of religious institutions. I'm glad
35 to see that's in there. It is not realistic to think that any of these things can be carried out
36 without bumping something else. Something is going to be bumped. So, we just have to
37 know that. Ms. Ervin and I both asked at the time we considered the Council President's
38 resolution on growth policy, what will this mean for your work program and we didn't get
39 an answer and we don't have a, it isn't that important that we have a specific answer.

40 The answer is, the work program suffers. Anything you do means you're not doing
41 something else and that's a fact. So, Councilmembers have got to understand that the
42 wheels of government may turn slowly and that constituents will be frustrated and that
43 with, you know, friendship and respect for my, the gentlemen from Potomac, those
44 constituents who believe that the mansionization crisis deserves an immediate



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1 resolution are almost as aggrieved as those ministers who think that their need for
2 growth in their churches deserved immediate resolution and the fact, that you know, in
3 each of --.

4
5 Council President Praisner,
6 Or the farmers who think the -.

7
8 Councilmember Leventhal,

9 Well, I'm going to speak about the farmers in just a moment. I'm going to speak about
10 the farmers in just a moment. The fact is that each of these things affect other things.
11 From my perspective, as one who is very sympathetic to the church's belief that they
12 have not been listened to by the Planning Board, that the Planning Board has not been
13 sympathetic, that when we are providing amenities, when we are meeting the needs of
14 the people we represent, the people we represent, many of them, not all of them
15 perhaps, need to pray and that we've been planning communities without allowance for
16 that. We haven't been taking that into account and so when we do this inventory of
17 religious institutions my hope is it will in fact inform the other master plans that we do.
18 Ditto for mansionization. I mean, we're going to make decisions about housing and
19 residential zones and we need to have an overall policy. Ditto for the inventory of green
20 space that you're doing. I mean, each of these, master plans has an effect on other
21 work that you're doing. Now, I'm reading, now, first off all, I don't think the glass, I'm not
22 going to say the glass is half empty, I mean, you're doing, you know, you're productive,
23 you're producing outcomes, things are slower than we would like. That's endemic to
24 government. Government is always slower than we would like. But I am going to read
25 from this report, in addition to the growth policy effort the staff has recently spent
26 unprogrammed time on parking waivers for elderly housing, the Forest Conservation
27 Task Force, revisions to the forest conservation law, Planning Board rules of procedure,
28 Planning Board rules of enforcement, development review manual, Ag policy working
29 group, and Ag reserve recommendations, road code, mansionization, easement
30 enforcement, particularly forest conservation easements. All of these things are
31 important. From my perspective not all are equally important. I think from my
32 perspective, not all of them clearly represent a majority consensus of the County
33 Council in terms of urgency and this is another important point I want to make. With
34 OLO we have in place a procedure that I understand fairly well, where no one
35 Councilmember can get OLO to do a whole full-blown study of something. We go
36 through a sorting process where you actually have to line up votes before OLO gets
37 direction and then OLO's work plan, we vote on it. Okay. I think Planning Board is trying
38 too hard and not successfully to read the Council. And I think we need a little clarity in
39 terms of what is a priority for the whole Council. I respect Councilmember Floreen's
40 interest in the road code. I know that my colleagues respect Mr. Knapp and my interest
41 in accommodating religious institutions. I very much respect Mr. Berliner's interest in
42 mansionization. Somehow we have got to have a sense of what are priorities for the
43 whole Council and we have got to have it in writing so that it's not disputable. You made
44 the comment Mr. Chairman that you have a lot of staff here because they need to get



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1 the sense of where the Council is at. My sense is that in Silver Spring, commissioners
2 and staff are spending too much time reading tea leaves as to what we think and what
3 we feel and that we ought to have more clarity about, we've asked you for this, it's in
4 writing, there's a record that shows we've asked you for it rather than a whole lot of time
5 spent wondering, what did Councilmember so and so really mean when he said this and
6 you know, how important is that really? There should not be so much left to
7 interpretation.

8
9 Royce Hanson,

10 I hate to disabuse you, but we're probably not thinking about that a whole lot.

11
12 Councilmember Leventhal,

13 (laughter) All right then. But then that leads me to my next point, which has to do with
14 the growth policy. Okay. It seems to me that what this Council would benefit from the
15 most in growth policy is the considered judgment, independent judgment, of the
16 Planning Board staff and commissioners taking into account needs for growth, taking
17 into account housing projections, taking into account business start-ups and what that
18 means, taking into account available infrastructure, trying to interpret the adequate
19 public facilities Ordinance. Not interpreting election results or trying to figure out what
20 we want. Okay. You should give, if I could just finish.

21
22 Royce Hanson,

23 I can assure you that you are going to get an independent, professional and Board
24 judgment on growth policy. Well, thank you.

25
26 Councilmember Leventhal,

27 That's what we should get.

28
29 Royce Hanson,

30 I assume that's what you want.

31
32 Council President Praisner,

33 Nobody said anything other than that. Okay.

34
35 Councilmember Leventhal,

36 So the point being, we should receive from you, then we'll do the tea leaf reading on our
37 own, we'll do our own political interpretation of what we want, but we should receive
38 from you your best independent judgment and it should not be a reflection of what you
39 think we want. We end up, and I'm afraid this does take place. And certainly, in
40 Clarksburg, I mean, we've had this political sensitivity, who follows who? Do we take
41 your advice and respond to your advice? Do you take our political judgment and try and
42 give us what you think we want? Do you follow us? Do we follow you? It's not clear and
43 I think we need more clarity. So I would like to ask our staff if the Council President
44 concurs, number one with respect to developing the work plan could we to some extent



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1 formalize a process that more closely resembles the process we use for OLO so that
2 there isn't confusion, so that one Councilmember asking a question doesn't necessarily
3 set off this cascade of staff and commissioner activity. Is there a way we can move
4 more in the direction of the way we manage it with OLO?

5
6 Council President Praisner,

7 I'm not sure. Because actually the way we work it out with OLO is no different from a
8 standpoint of each Councilmember getting one project that they want. So, it's not a
9 collective kind of process that says that you make decisions. We respect each
10 Councilmember's request and we have one project for each Councilmember.

11
12 Councilmember Leventhal,

13 But then at least it's in writing and it's clear.

14
15 Council President Praisner,

16 I don't think you want to suggest that each Councilmember gets to suggest or nominate
17 a master plan and we will have 9 master plans going simultaneously because each
18 Councilmember gets to have each other's support.

19
20 Councilmember Leventhal,

21 But, de facto, that is in fact what's happening.

22
23 Council President Praisner,

24 No. It is not.

25
26 Councilmember Leventhal,

27 Well, they embark on the road code, they're embarked on the religious inventory,
28 they're embarking on mansionization. These are individual initiatives by individual
29 Councilmembers. All of which I support.

30
31 Council President Praisner,

32 Well, but they're not individual initiatives by individual Councilmembers. The work plan
33 and the budget are adopted by the collective Council. So it is not, I think the question
34 more relates to the questions asked of the Planning Board to respond to, from an
35 individual Councilmember perspective and I think if we follow-up with the method that
36 we have discussed at the table today, which is for everyone if they have a request to
37 make sure they go through Joyce or the Chairman's office rather than individually to
38 staff and having the Chairman's office come back and kind of work through what the
39 impacts and work load issues are and if it's such that the Planning Board can not do that
40 work, we have an opportunity to raise a question as to whether a majority of
41 Councilmembers wants it done. That might be, that's as close to the OLO process as I
42 think is appropriate at this point, given the fact that the work plan that we adopt through
43 the budget is the collective Council vote of at least five members that tells the Planning
44 Board what to do.



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Councilmember Leventhal,
Right, but as the --.

Council President Praisner,
The Ad Hoc work that causes --.

Councilmember Leventhal,
Well here we go, but the staff has recently spent unprogrammed time on more than a dozen other items.

Council President Praisner,
Well, but the question is whether the staff needed to spend that time or what was the staff asked about that.

Faroll Hamer,
With all due respect a good number of the things on this list are things the PHED Committee raised.

Councilmember Leventhal,
Right.

Faroll Hamer,
That they scheduled for Hearings so the staff is very uncomfortable not responding to that and they're also uncomfortable bringing something to the PHED Committee that has not at least been presented to the Board as an informational item.

Council President Praisner,
(multiple voices) We will have a follow-up conversation on these issues but I don't think the PHED Committee in the last 2 months has raised any issues of any magnitude for consideration. You have spent a lot of time on your own procedures and it's taken a long time for us to approve them. But that's occupied a lot of work that you never would have done before. But asking a question like how many, what was the experience of a waiver on senior housing should not require more than a couple of hours of response. And if you can't build in, in my view, to the work plan the opportunity for an Ad Hoc question and an Ad Hoc answer then we're in real trouble.

Royce Hanson,
We have to have latitude in the work program for a whole series of Ad Hoc issues that arise.

Council President Praisner,
Obviously.



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1 Royce Hanson,
2 And we have to have room in the work program for issues that come to our attention
3 which we have to do some preliminary work on before we can bring it to the Board. I
4 think what would be very helpful in response to Mr. Leventhal's question though, is that
5 in the budget process that we do have a formal work program of matters that have to
6 come before the Council. It's also important to remember that the work program
7 scheduled for master plans, for example, is something that we need to deal with more
8 effectively. The, but there will be issues that arise, we're operating on the regulatory
9 field almost completely out of the view of the Council. And that stuff has to go on and in
10 the course of doing that issues arise that really have to be dealt with, the forest
11 conservation issues are a perfect illustration of this problem. We were having problems
12 both at the administrative level as we got into it and looking at the administrative level,
13 we realized we had problems with the comprehensibility of the law. And we needed to
14 address those things. And if we don't address them then you get all kinds of complaints.

15
16 Council President Praisner,
17 --come back to us to ask for an amendment to the work plan in order to do that.

18
19 Royce Hanson,
20 Right.

21
22 Council President Praisner,
23 And that's my point is that things are going to arise that you have to respond to, whether
24 they're regulatory or a complaint that raises a question which is the way the forest
25 conservation issues began as concerns and you have to have flexibility fungibility in
26 your staff that they're not so programmed --.

27
28 Royce Hanson,
29 That's correct.

30
31 Council President Praisner,
32 That you can't respond to an emergency or a question that arises without it becoming
33 an amendment to a work plan.

34
35 Councilmember Leventhal,
36 I had two other quick items Madame President.

37
38 Council President Praisner,
39 Sure.

40
41 Councilmember Leventhal,
42 Regarding minor site plan amendments, you're very much aware Mr. Chairman that we
43 passed legislation a year ago, we were concerned that abuses had occurred with
44 respect to development in Clarksburg and so we took away from the staff the ability to



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1 make even very small decisions and said no, the commissioners have to be record on
2 everything. And so now we have a situation where homeowner's associations,
3 especially in Montgomery Village but I know the concern exists elsewhere in the
4 County, believe that they can't plant a new tree or move a little hillock without --.
5 (multiple voices) Okay. Where does that issue, so here's my question, where does that
6 issue stand and is a change to law required and if it is, can we develop it? I know
7 there's some interest here in the Council.

8
9 Royce Hanson,

10 I don't believe a change to law is required. I think if we did, we already have identified
11 that issue and I think probably the development manual or the forms that are available
12 for people can take care of that problem. It is essentially not a problem.

13
14 Councilmember Leventhal,

15 Well, we'll look forward to further dialogue on that. Appreciate the assertion that it's not
16 a problem. We'll see if the constituents feel that way.

17
18 Royce Hanson,

19 Well, I know some constituents, I don't know where the, well I do know where the issue
20 arose.

21
22 Councilmember Leventhal,

23 You spent a little time in Montgomery Village.

24
25 Royce Hanson,

26 Yes. It arose because the Board did take action on what we regarded and found to be a
27 site plan violation. That metamorphosed on the grapevine, not from anything said by the
28 Board I don't think, that this was going to generate enormous costs for homeowner's
29 associations doing normal repair and replacement of facilities. The Board talked with
30 folks from Montgomery Village or a representative from Montgomery Village last week
31 on this matter and assured her that we would take care of this problem, that it doesn't --.

32
33 Councilmember Leventhal,

34 Okay. Well, I'll look forward to the outcome of that. Last point.

35
36 Royce Hanson,

37 I think their concern needn't be there.

38
39 Councilmember Leventhal,

40 Okay. Ag policy working group, you cite this as an example of something that has been
41 time consuming of staff and commissioners but let me say as the guy who appointed
42 the Ag policy working group, a year or so ago, we tried, we the Council tried to get a
43 task force of stakeholders who live up there, work up there, farm up there who are
44 intimately connected with the issues up there with a wide range of points of view, those



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1 who are primarily motivated by conservation and the environment, those who are
2 primarily motivated by growing soy beans and earning a living, a variety of points of
3 view and I don't recollect, now I wasn't in the PHED Committee discussion, but I don't
4 actually recollect in appointing this Ag policy working group asking the Planning Board
5 to give the Ag policy working group report the one over or the thumbs up or thumbs
6 down. And yet, the Planning Board, I know there are strong views about conservation
7 and protection of our Ag reserve. We all have strong views about it. But, if the Planning
8 Board believes that that was something the Council asked it to do and that therefore
9 other things had to be delayed so that the Planning Board could opine on some of the
10 contentious issues in that Ag policy working group, I don't actually recollect asking the
11 Planning Board to take on that task.

12
13 Royce Hanson,

14 I believe you had asked that the Planning Board provide staff support. Which it did I
15 believe for the Ag policy working group.

16
17 John Robinson,

18 Now, I'm going to say as a regulator that I'm the one that's going to get frosted. We
19 have primary jurisdiction for interpreting the Ag reserve regulatory structure when it
20 comes before us in terms of the match the integrity and the purpose of that master plan.
21 We've had a few different disagreements among ourselves. To think that the regulatory
22 body who is responsible for administering the plan should not comment and be
23 intimately involved in the development of any policy related to the Ag reserve, with all
24 due respect Mr. Leventhal, is ridiculous. Of course we have to review it and comment
25 on it because we are going to be responsible for administering it unless you would
26 prefer us not to comment on the things that we are responsible for administering. We're
27 quite good friends and I want to be tactful but on this one I'm not going to worry about it.

28
29 Councilmember Leventhal,

30 Well, I have some, I do have some concern about where that report stands now. So, I
31 mean, I think we're in a place --.

32
33 Council President Praisner,

34 --is drafting legislation to implement the report to the extent that it is a legislative
35 answer. We identified within the PHED Committee and the report, as did the task force,
36 short-term mid-term and long-term solutions. The PHED Committee reviewed those,
37 had the benefit of the input from the Chair, there are differences of opinion that will be
38 worked out from a legislative perspective, it's sausage we're going to make on some of
39 these. And therefore, I don't know that in the, and I would hope through the Public
40 Hearing process, we would have the benefit of input and we are not saying that we
41 might not be persuaded that there are some modifications to something that is in front of
42 us. But, staff is drafting the documents that will help us to consider officially
43 implementation of the recommendations of the task force and the Planning Board will be
44 able to weigh in on that.



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1
2 John Robinson,
3 I appreciate that.

4
5 Council President Praisner,
6 Through the Public Hearings as well. But that's where it is.

7
8 Councilmember Leventhal,
9 Well, I appreciate that. Look, there were many who said a year ago that while the
10 Planning Board was working on some other internal urgent matters, that it was not
11 addressing issues in the Ag reserve and therefore the Council acted to appoint this
12 working group so for the Planning Board now to say, well of course we must now
13 basically throw cold water on many of the, much of the work that had been done by this
14 working group which was appointed because we were not getting from the Planning
15 Board a comprehensive set of recommendations in the Ag reserve, you know, we could
16 all get frosted all we want here, I mean we were not getting from the Planning Board
17 what many Councilmembers felt would have been of benefit.

18
19 John Robinson,
20 And I agree.

21
22 Councilmember Leventhal,
23 So, the Council --.

24
25 John Robinson,
26 By the way Mr. Leventhal I agree completely.

27
28 Councilmember Leventhal,
29 Okay good.

30
31 John Robinson,
32 The first part of the statement but I also think that the second part of the statement --.

33
34 Councilmember Leventhal,
35 So the Council went ahead, the Council appointed the working group and now the
36 Planning Board, oh my God we can't, oh no that's terrible, oh no. Well, I'm not sure
37 that's the sequence of events that is the most productive or respectful of the community
38 members who spent a year working on a comprehensive set of recommendations.

39
40 John Robinson,
41 That may very well be true but I think the more fundamental point that I'm driving at, with
42 perhaps less tact than I should have, is that if the Council asks X to be examined and
43 we may not even be involved in the initial decision, you might not want us involved in
44 the initial decision, and on the Ag reserve I will completely stipulate that that study,



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1 which was a one year effort was a dropped ball. I said so publicly and I will say it again
2 and I regret it. I personally regret it because it reflects on me. But I think the point I am
3 driving at, rather forcefully is, when you start down a road on a major public policy
4 evaluation, and this agency has jurisdiction by law with administering it, we're going to
5 be involved and that's going to impact on our workload and therefore that should be
6 taken into consideration in starting that process. That goes to the issues of housing, it
7 goes particularly to the issues of transportation as they relate to the master plan and
8 other matters. So, my point is directed not to who struck John on the Ag reserve, but the
9 practical work, we're the ones that probably should be beaten up quite frankly, but on
10 the administrative processes that are involved in this agency and how it affects our
11 workload.

12
13 Councilmember Leventhal,

14 Well it seems to me, that's a lose lose. In other words, if work is not getting done so the
15 County Council identifies an alternative means of getting the work done, and then after
16 the work is done the Planning Board says, oh my God, we can't let anyone else do that
17 work, we have to go over and we modify our work plan --. (multiple voices) Then that's a
18 real lose, lose.

19
20 Unidentified

21 Time out guys.

22
23 Council President Praisner,

24 We have 2 more Councilmembers who want to comment and they deserve adequate
25 and appropriate consideration of their questions or comments as well. Councilmember
26 Elrich.

27
28 Councilmember Elrich,

29 Thank you everybody for enduring this amazingly long afternoon. I just have some
30 comments and observations to make. Listening to the discussion which I think was
31 really helpful, at least for me. On the issue of timeliness or speed, I'm less concerned
32 about the speed issue than the timeliness issue. I don't think we would be having the
33 debate about how slow things are if they were being done in a regular 10-12 years
34 cycle. So that it was predictable and then, and ordinary. I think part of the problem we're
35 faced with is, we want these things done quickly because these things have been long
36 delayed and time has kind of overtaken a lot of these plans. And so, I happen to like a
37 lot about the old master plan processes. I may quibble about how the committees were
38 made up and how, what weight is given to different elements of the community and how
39 those Committees are put together, but I think the principle of maximizing community
40 input is a good one and if there are new techniques that have been suggested to let us
41 do a better job of that, that's fine, but my interest is in maximum input, not minimum
42 input and I think time is valuable. I think you're right about, if we want quality reports that
43 there's a time element involved in that and I do think the devil is in the details and I've
44 been looking over what I believe is the lamentable change to the Silver Spring Fenton



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1 Village plan from the, because I sat on the sector plan Committee to the first Fenton
2 Village and looking over it now in light of the concerns that are coming out of the
3 community and I can see the frustration. Because you have very descriptive language
4 of what this place is supposed to look like and then you flip one or two pages forward
5 and you have a set of policies that guarantee there's no way it's going to wind up
6 looking like that. As so, you know, it's like this is what we value, this is what we want to
7 see here, this is what we want to see reproduced, and by the way, we're going the
8 knock it all down and it's going to go corner to corner and won't wind up looking
9 anything like this. And I found that, you know, kind of distressing when I read it because
10 there was the nod to the community that thought they were getting one thing out of the
11 plan and then there's the reality of what the implications are from the zoning decisions
12 will lead to very different outcomes. And I think, you know, I think what Royce was
13 getting to, was there are these bigger policy issues that, you know, form a lot of what
14 happens inside the master plans anyway and we could look at some of those bigger
15 policy issues from what we know and understand about the implications, I think, and act
16 on them and that would maybe give more clarity to what goes on in the master plan,
17 maybe more certainty to the people who are going to be affected by future master plans
18 but I think it's, I guess I feel like there needs to be some more sharing of responsibility
19 here. I mean, I hear, you know, the comments that Roger made about wanting the
20 Committee to do the mansionization, I'll remind Roger again, this isn't just a Bethesda
21 issue it's being County wide. But I also don't see the problem with you know, with our
22 using citizens to give us a cut of what we want and using staff as somebody we go to
23 and say, now can you react to this rather than dragging you all in from the beginning to
24 the end of process. I mean, I think there is a value in letting the community articulate a
25 vision. It doesn't require as much planning. And at the same time, I think we have the
26 ability because of the resources that are in this community to bring in all kinds of
27 citizens who can provide some of the very expertise and the examples that we would
28 get out of the Planning Board. I mean, I know we have talked about forest conservation
29 law, Roger and I are working on a tree Ordinance, we have had no problem getting
30 examples of what tree Ordinances look in other parts of the country. We could have
31 called staff at Park and Planning and said, you know, will you guys do research and
32 give us everything you know about this, but we're capable and were able to find
33 resources that made that possible. And I think that to some extent, it makes sense for
34 us to use our staffs, even my personal staff, to do some of this work and to work with
35 communities and then bring Park and Planning in at a point when their input is really
36 critical. I don't think that we should come up with a final product and leave you in a
37 position of coming before the Council when it gets to us and reacting against it. And
38 we've tried on the forest conservation law and I, you know, I've talked with you about
39 this, we worked with the C&O task force and we've brought along a law, that's actually
40 fairly well drafted. I would love, and I wish I had understood how far you had gotten,
41 because I would have loved to have said take this and respond to it and let's do this
42 thing together rather than we have a version and you have a version and then we get
43 into fights over authorship. Because to me, it's the outcome not the authorship that
44 really matters to the extent that we can do something that lessens the load on you,



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1 that's a good thing for us to do as long as you're in the loop and you have a role to play
2 in that process. You know, I'm trying to find a way to make sure that all of our needs get
3 met in this. I'm hoping that the development manual addresses some of my concerns. I
4 mean, frankly, I have spent far too much time, as I'm sure some of Planning Board
5 people feel, dealing with a couple of problems that I think could have been dealt with in
6 the development review process. If we had clearer standards about who can sign what,
7 what needs to be included in applications, penalties for not including the right stuff in an
8 application. I mean, for your staff to have to take something that's incomplete or
9 incorrect and then get a correction and go back through it has got to be unpleasant and
10 time consuming. I mean, essentially you are doing the work twice. From my point of
11 view, I mean and I know as unpleasant as this has been, sometimes you have to accept
12 it, if when residents get to us and have grievances, we wind up having to look at it, and
13 believe me that's not what I want to be doing. I've, you know, got other ideas of what I'd
14 like to be doing instead of becoming an expert in things I really don't think I need to be
15 an expert at. So I think that, you know, a clearer development manual with a clearer set
16 of responsibilities and consequences and I'm a firm believer that consequences will get
17 you better results. I mean, if somebody knows it's going to cost them time and money,
18 god knows how many have heard developers talk about how much time is money, that
19 the clearer it is that what they need to submit on the outset, the more likely you are that
20 you are going to get what you want and that everybody's going to be able to understand
21 it, your work will proceed better and I think we'll all have a happier relationship. I do
22 appreciate the load that you have. And I think that, you know, as short staffed as you
23 are with as many things that are on your plate it's very difficult to get them done and I
24 noticed you laughed when you talked about, do we want to have master plans at our
25 table all the time. It's going to be sweet revenge because then we're going to be dealing
26 with this stuff and you know, I mean on top of our workload, it's going to have
27 consequences for us. But we can't get out from under the mess once we do our part. So
28 if I have master plans in front of me for the next 3 years every month, then so be it.
29 That's what I've got to deal with. I think it's a necessary price we have to pay. So, I look
30 forward to any way you can think of of scheduling those things. I hope during the budget
31 process, but more broadly in terms of how you look at the organization, do you take this
32 opportunity to think about what is the best way to organize resources? I mean, it seems
33 to me that you have got enough experience to know that what you had didn't get you
34 what you wanted. And so, do you just want to replicate the organization or do you want
35 to take this opportunity, you know, to think as much as possible about how to organize
36 things differently, to get an output that's a little bit, that's better for you? So, I'm you
37 know, and I've said this before, I'm not adverse to having a full-time Planning Board and
38 I just am amazed at the amount of work you do and I've been there and I've seen the
39 stacks of paper. Your stacks of paper rival our stacks of paper. And then to meet as
40 infrequently as you do and have to digest as much as you do I think is a really serious
41 burden that's put on you. And anything that can be done to make that, either in terms of
42 staff support or your own time, make that, you know, your time more productive I think
43 would be a positive thing. I think among the priorities, George listed the list of
44 unintended things that you did, but one thing I think is important whether or not we ever



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1 put it on a work list is enforcement of laws. And whether you put it on there or not, you
2 have got to do it. And as we have found enforcement of laws and as we know in some
3 of the cases that have come up, it's not just enforcement of laws, it's deciding whether
4 or not you can enforce the law. What's the clarity? Where are your bounds of authority?
5 And once it's put on your table, you have to deal with it. You can't walk away from
6 essentially a legal issue and say that's not in my work plan. The legal issues --.

7
8 Royce Hanson,

9 That raises one thing that we do really need to talk to you about. We're starting work on
10 the, in fact we have done, I think we're in a second draft of enforcement regulation
11 which would come to you. But one of the things that we discovered as we work on this,
12 and it wasn't new knowledge, but it just really sort of hit us, is we have three different
13 forms of enforcement set out in three different laws. It's altogether possible that we'll
14 have one violator of all three of those. For us to have to go through three enforcement
15 processes may not be insane but it's just a teeny bit crazy. And we really need to be
16 able to come back to you and put all these in one basket so that we can use one
17 process for all of these things. It would really help I think a lot and, because part of the
18 enforcement process is not only enforcing it, but getting it done in a relatively speedy
19 way.

20
21 Councilmember Elrich,

22 One of the most important things to me is sorting out what are the administrative
23 procedures that you have the authority to change? I mean, this is a question I've asked
24 also to the executive side of the street. So this isn't just a Park and Planning question.
25 What are the legislative remedies that you need?

26
27 Royce Hanson,
28 Right.

29
30 Councilmember Elrich,

31 And so to the extent that, you know, you need the legislative fix is really important to ask
32 for the legislative fix --.

33
34 Royce Hanson,
35 We will.

36
37 Councilmember Elrich,

38 And as important as it is to do the, what you can do in a regulatory sense, I mean, I
39 hope you will take a free hand and deal with the regulatory issues. And lastly, I really
40 appreciated your comments in response to Roger's question about vision. Because I
41 think that is really the long term issue that faces the County. I mean, we have 930 or 40
42 thousand people who live here and they're vested in this community. And I get very
43 nervous when we talk about vision as if we're creating a new city someplace without
44 regard for the people who live here. And I think your comments about being sensitive to



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1 the older communities, that just because you have a single family neighborhood that's
2 within a half mile of a metro doesn't mean you should obliterate the single family
3 neighborhood. I mean, everything isn't sacrificed on the alter of highest and best use.
4 But instead, there's a recognition that best use is the quality of community that you've
5 created and if we have created good strong communities then that's the best use. And
6 it's okay. And just because you could tear down a neighborhood and substitute
7 apartments, and try to make it look like a city, density alone is not a definition of best
8 use. I mean, there's a lot more that goes into a community than that and I really have
9 appreciated today the other comments I have heard you make. You're, the respect you
10 have for the community of Montgomery County and not the technicalities of what's a
11 good planning, I guess I look at planners sometimes as thinking this is all out of the
12 books and I can just impose this vision and I feel like, you know, you have done a good
13 job of having a sensitivity for the community and not simply trying to take something out
14 a book and land it on the County and that I appreciate it.

15
16 Council President Praisner,
17 Councilmember Andrews.

18
19 Councilmember Andrews,
20 Thank you. Dr. Hanson, you mentioned earlier that most of the development that will be
21 approved in the master plans that will come before this Council won't be fully
22 implemented for about 20 years. So, looking out 20 years you'll be come back applying
23 for your third stint. (laughter) We'll be gone.

24
25 Royce Hanson,
26 I'm a slow learner but probably not that slow.

27
28 Unidentified
29 (laughter) You have to survive the next 2 or 3 years.

30
31 Councilmember Andrews,
32 Alright. We are going to have, we've got a lot of churning in the County, about 5% of
33 County residents move out each year about 40 to 45,000 according to research
34 numbers at your department. So, enormously new number of people over the 20 years
35 even if there were no population change. Tremendous change in the people. So, 20
36 years from now these master plans are implemented, what would constitute success, in
37 your view, in terms of the built environment and then how the natural environment would
38 look and what would constitute failure?

39
40 Royce Hanson,
41 I'm going the wing it here a little bit but I think that's a very good question and my
42 colleagues may want to join in on this.

43
44 Councilmember Andrews,



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1 Sure.

2
3 Royce Hanson,

4 I think that we would have enormously improved urban design in the quality of our high
5 density areas that we would have a lot more people walking and using public
6 transportation and using bicycles than we have now. I think that we would have stable,
7 old communities that would be able to undergo, you know, graceful transformation in
8 which there will still be removal of some old structures and their replacement but they
9 will be in scale and in harmony with those neighborhoods. I think we would expect that
10 there would be substantial improvements in air quality and water quality in the
11 tributaries to the Potomac and the Chesapeake Bay. In general I think people would
12 regard Montgomery County in 20 years as having improved its quality of life. Rather
13 than have degraded it over time. If you see what has happened in a lot of metropolitan
14 areas, the general quality of living has declined in too many places. I don't think that's a
15 necessary function of population growth and change. But it is an inevitable function of
16 not doing, not paying a lot of attention to planning and not paying very close attention to
17 the way in which and the zeal with which we carry out the plans that we make. A lot of
18 the problems that result are not in the plans but in the way in which we execute many of
19 our plans. And that means that we not only have to do the good planning and the good
20 thinking but we also have to keep improving, this gets back to your issue about the
21 basics, the management of our change and the management of our development
22 process. And, you know, we could, this can be hard to improve on perfection but this
23 could be a better place.

24
25 Councilmember Andrews,

26 Okay. Any other thoughts anybody?

27
28 Allison Bryant,

29 Although of course what Royce said encapsulates a great deal and it could stand alone,
30 I believe that 20 years from now I think we're still be a better place even beyond what
31 he's suggesting if in fact those people who constitute the community are really involved
32 in the process. And I'm talking about starting now. Because, and you know this, you
33 have the same old, same olds always coming and playing a role in every single work
34 group, worksession, any testimony given et cetera. I think that we as the Planning
35 Board should do a better job of making sure that we are in fact incorporating those folks
36 whose voices are not as readily heard at this point, so 20 years from now I expect that
37 we are going to see a difference in terms of the recreational activities offered, we're
38 going to see more diversity in terms of what's offered within the down County
39 communities as well as the up County communities too, from that standpoint. And we're
40 going to see a Planning Board that really believes that when the County Council calls
41 from an individual standpoint that they don't have to jump up and salute and respond
42 directly to them. Because that's not the group that we have now. We say that; but the
43 reality is that, and then I think that Faroll said it best that, come on, when a County
44 Council person calls, certainly they are going to stand up and they are going to listen



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1 and they're going to find out what you want and they're going to try to respond as
2 completely as possible because, as Madame President has said to a previous group
3 that was sitting here, everything's political because the budget in fact shapes thing and
4 so from that standpoint, the staff understands that you in fact shape the budget and
5 therefore that shapes us. My hope however though is that 20 years from now we'll be in
6 a position as my colleague, Meredith Wellington suggested in private and that is that we
7 will be, in fact, it's clean, it's all right, that we would be the experts that you really, really
8 come to from the standpoint of trying to get answers in terms of the questions that you
9 ask and that those answers will be given unbiasedly and will be coming from a source of
10 expertise and not trying to meet expectations. That's what I see 20 years from now.

11
12 Councilmember Andrews,
13 Okay. Alright. Any last thoughts, Meredith?

14
15 Meredith Wellington,
16 Well, no not really. I do want to thank you all for the opportunity to serve. I have really
17 enjoyed these 8 years, as challenging as they have been, I've got a few months left. It is
18 an opportunity to shape the County. It's a great County. It's very rewarding to problem
19 solve with the citizens of Montgomery County, they challenge you, they know a lot, they
20 know more than I do on many subjects and that's a good thing. So, I enjoyed that. In
21 terms of the next 20 years, I hope we see more lifestyle choices, I hope all the Metro
22 Stations do not look exactly the same, I think there should be, I hope that transportation
23 choices so that people can get all around the County to enjoy the different cultural
24 events and even come to these Hearings. I know we even have trouble now with people
25 getting to our Hearings because of transportation. And I hope we work harder on
26 implementation and not in the next 20 years. I think that if you read any of these master
27 plans, the final devil is in the details of the funding and the closure, the closure on a
28 project. I don't think we have quite realized how urban we are, how sophisticated we
29 are, how sophisticated the projects we are doing now and sometimes there is a little bit
30 of Manhattan going on instead of a green field development and we haven't quite
31 stepped up to that.

32
33 Councilmember Andrews,
34 Thanks.

35
36 Council President Praisner,
37 Well, I guess I get the last word. Meredith I anticipate that we will have you back for a
38 Council meeting to more formally thank you and Wendy for your years of service on the
39 Planning Board. So I don't want this, and obviously we are going to have PHED
40 Committee meetings, we are going to have budget deliberations and we are going to
41 have a joint meeting with the Prince George's Council all of which are opportunities for
42 commissioners and you still have, you know, months of service associated with us. We
43 haven't chosen successors, so I don't want this to sound like it's a farewell at this point
44 except that it is a semi-annual report and the last time you'll have to sit through it as a



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1 commissioner. But I want to personally thank you for especially your attention to two
2 things: community concerns and trying to have those articulated at the table, making
3 sure they're paraphrased or rephrased from a commissioner perspective to get the
4 answers to the questions you hear and secondly for your focus and commitment to the
5 parks and your your focus on ball fields and soccer fields and implementation and
6 quality and scheduling and all of those issues that recognize that we have a number of
7 organizations and a number of needs in our parks and you have definitely focused on
8 the parks over the 8 years and I very much appreciate that. We all do. Because I know
9 that's been your special passion and you have certainly served that passion and that
10 important issue very well as far as a commissioner is concerned so I want to thank you
11 on that.

12
13 Meredith Wellington,
14 Thank you.

15
16 Council President Praisner,
17 What I heard today is that Councilmembers as well as commissioners are concerned
18 about the future but also concerned that we have processes in place that allow us to
19 respond both to the administrative and regulatory roles but also to the big issues and Ad
20 Hoc issues that may come up, whether they are individual Councilmember questions or
21 questions that may come up because of some review that you have or review that
22 comes up because of some case or some issue and we have to have some flexibility as
23 well as we need to have some attention to ways in which we improve the
24 communication process. Over the 16 years that I have sat here as a Councilmember,
25 the workload has increased for Councilmembers as well. The community questions and
26 concerns and the expectations for some kind of response to those concerns has only
27 grown and that's not exclusively a Park and Planning commission issue. It affects
28 Department of Public Works and Transportation. It affects Permitting Services. It affects
29 Environmental Protection. It affects State Highway. It affects every agency of
30 government. I think we collectively have to find a way to improve a way in which we
31 respond to those concerns such that there aren't a million different separate initiatives
32 going forward on the same issues, for all of our sakes as well as for being able to
33 effectively handle the issue. I think we're always going to have a certain core of
34 community people who are going to participate Allison and I think they need to continue
35 to participate. My concern and I think you share it, is that we have to go beyond that and
36 I don't think the traditional folks that we have coming to the table disagree with that
37 either. They're not asking for exclusive right at the table, they're asking for a broader
38 table and they're asking for community participation and they think that they represent
39 that advocacy role for everybody and they're trying to find ways of engaging that. I hope
40 we can find technology ways that expedite the process but also improve the process.
41 Technology is a tool not the end result and I share concerns about whether we are
42 esthetically as attractive as we should be and I don't think we are right now. And I'm
43 worried about the massing of space and structure that does not necessarily
44 accommodate what I think is the best in design and the best in urban and suburban



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1 settings so I hope that we can work on those issues as we talk about the next version of
2 master plans and helping you with site plan review and helping you with the regulatory
3 process that has, that helps with stable older communities to make that graceful
4 transformation but also helps us to develop urban settings that are more attractive than
5 the ones we appear to be building right now from my perspective. I hope we can focus
6 on the environment in a collaborative way but quite honestly I think the regulatory
7 process on the environment is what's broken, not the vision on the environment. We
8 have special protection areas in this community that we are not serving well and when,
9 quite honestly, the response back on why we shouldn't be buying more parcels to help
10 with imperviousness is they are only small parcels and they're not significant. That's not
11 the answer I wanted. That is an opportunity to respond to a special protection area and
12 just because they're small parcels and we've bought land there already, doesn't mean
13 that the issue shouldn't be looked at. So, I think we need to look at what message we
14 send about whether we're really concerned about the environment we have now and
15 trying to protect it as we look forward. And the water quality is a major issue with the
16 Chesapeake Bay requirements coming up. We all know we're not going to meet them
17 and so how do we respond to that and how do we make some progress having tried to
18 advocate for more funding at the federal level and more funding at the state level. I'm
19 not sure that the fund that is in front of the legislature right now is going to deal with that
20 issue. We have master plan areas where folks are concerned about the, being able to
21 maximize the issues that are in front of us and in front of them. Whether, and just
22 because they're commercial or business interests that are at risk if we don't move
23 aggressively on the master plans doesn't mean that's a bad word. We have some
24 business issues that I think have been brought to your attention relative to White Flint
25 and those areas too that I think are very critical and could hurt business if we don't
26 move in the schedules that we have talked about. We have areas that are very close to
27 those areas where folks have identified a need for perhaps changing the boundaries
28 that I don't think are that dramatically a problem if we're talking about small areas and
29 how do we look at them in a reasonable way. And if the study area, as we study we say
30 the street here is a better boundary than that street, we should be able to do that
31 without it causing a major problem in the work plan or in our approach. I don't think
32 that's a pro-business or a pro-developer or an anti-business or an anti-developer issue.
33 So, and there are going to be Ad Hoc questions. We obviously have a problem of
34 communicating because when I asked and Councilmember Knapp to my right and I
35 identified problems with senior housing that is being built where parking is causing
36 problems, my problem is that we tend to focus on the development and not on the
37 community and the after effect and we have got to start focusing on what is the
38 aftereffect of the development we approve so that we are building the communities that
39 we are talking about and stop talking about number of affordable units as units rather
40 than building a community and what the impact is in the development of that
41 community. I intend to sit down with Linda Lauer and see if we can schedule a time that
42 will allow us, not in this kind of setting, but in, perhaps in the third floor conference room
43 or in some other location, maybe we'll use one of your sites for more informal coffee
44 conversation, and may be we should start a series of them, on broad issues which will



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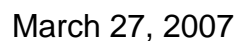
1 encourage and engender the kind of conversation from a philosophical and from a what
2 do we need to do to work together basis. But we do need to keep some fundamental
3 conversations about the nitty-gritty because we do have to adopt budgets and we do
4 have a work plan that we have to put in place. So, we have, and we're going to have Ad
5 Hoc issues that are going to arise and you have to have the flexibility to be able and we
6 have to have the expectations that you will respond to those Ad Hoc issues, whether
7 you find them or we find them, that we think warrant some response from Planning
8 Board or Planning Board staff. And I think we need to talk about whether everything has
9 to rise to a Planning Board comment level. And we also need to talk about whether we
10 are expecting or whether you need to send as many staff members to conversations. If
11 there is not a way from a technology perspective that you can listen in without being
12 physically here then we have to fix that. I very much appreciate all the work that goes in
13 day in and day out from a regulatory, from a visioning, from an administrative, from a
14 technical perspective, from a park perspective, and from a planning perspective. There
15 are lots of things day in and day out that are not work plan issues per se that the
16 community planners need to be working on and we haven't talked about those today.
17 They don't rise to the level of a master plan but they do require your participation. We
18 want your participation because we respect your input. It's not that we're being critical,
19 it's that we need you and we rely on you. So, please don't consider our, I hope we can
20 get beyond the, we're causing you work kinds of feelings because that work we can't do;
21 we can't do our job unless we have the benefit of your output and your expertise. I rely
22 on Bill Baron and – Wise. I rely on Mary Bradford. I rely on Gwen. I rely on Melissa. I
23 rely, I really rely on Carl Moritz. So, we have to have that capacity to pick up the phone
24 and make a call and ask a question. And if it's going to be a workload issue, obviously
25 we need to go through the Chair and we need to work through that issue. But, please
26 don't consider this conversation something that has you walking away from a morale
27 perspective less than you were when you walked in. But, we have a lot of the most
28 important business of this County to do together and we need to fix what we think needs
29 an improvement and keep moving on what you do so well and to do it collectively. So,
30 thank you all very much.

31
32 Royce Hanson,
33 (multiple voices) There is one, there is one thing that you could do for us that would be
34 very helpful.

35
36 Council President Praisner,
37 And that's budget.

38
39 Royce Hanson,
40 Other than budget.

41
42 Council President Praisner,
43 Oh, okay.



And, this is in the last item in your staff report and that's the prioritization of Text Amendments. And this is something that you could do that we don't have to do anything about.

I think we need to schedule, unfortunately, a conversation about that in, probably in the PHED Committee and have my colleagues have a chance to weigh in so we understand that there are pluses and minuses and what are the implications of doing this in some way. But, I mean, we have had side bar conversations about do we do this during a window, do we create a emergency needed kind of process, but we do need to look at that. Thank you all very much. Sorry to keep you beyond the 5:00.